SUPPLEMENTARY APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

Nos. 76-777, 76-933, 76-934 and 76-935

PEGGY J. CONNOR, ET AL., *Appellants*
and
THE UNITED STATES OF AMERICA, *Intervenor*
v.
CLIFF FINCH, Governor of Mississippi, ET AL.

CLIFF FINCH, Governor of Mississippi, ET AL., *Appellants*
v.
PEGGY J. CONNOR, ET AL., and THE UNITED STATES OF AMERICA

UNITED STATES OF AMERICA, *Appellant*
v.
CLIFF FINCH, Governor of Mississippi, ET AL.

PEGGY J. CONNOR, ET AL., *Appellants*
v.
CLIFF FINCH, Governor of Mississippi, ET AL.

Jurisdictional Statement in 76-777 Docketed December 8, 1976
Jurisdictional Statements in 76-933, 76-934 and 76-935
Docketed January 5, 1977

Probable Jurisdiction in 76-777 Noted December 8, 1976
Probable Jurisdiction in 76-933, 76-934 and 76-935
Noted January 17, 1977

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION No. 3830

PEGGY J. CONNOR, ET AL., *Plaintiffs*

v.

PAUL B. JOHNSON, ET AL., *Defendants*

Submission Pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature

[FILED FEBRUARY 9, 1973]

Pursuant to Order of this Court dated January 4, 1973, defendants hereby submit and move this Court for approval of the legislative apportionment plan enacted by the Mississippi Legislature in the Regular Session of 1973 as approved by the Governor on February 9, 1973, and for cause would show unto the Court the following, to-wit:

1. That the Mississippi Legislature enacted House Bill No. 446 which apportioned the House of Representatives of said legislature. A copy of said bill is attached hereto as Exhibit I.

2. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971, with the exception of those most populous districts, i.e. Hinds County (District 31), Harrison County (District 45), and Jackson County (District 46). These districts are apportioned as follows:

A. District 31, being Hinds County, shall have two representatives residents of and elected from each supervisors district. The two remaining representatives shall be residents of any area of the district and shall be elected district-wide.

B. District 45, being Harrison County, shall have one representative resident in and elected from each supervisors district. The two remaining representatives shall

be residents of the district and shall be elected district-wide.

(c) District 46, being Jackson and George Counties, shall have one representative resident in and elected from each supervisors district of Jackson County. The one remaining representative shall be a resident of George County and elected district-wide.

3. That the Mississippi Legislature enacted Senate Bill No. 1701 which apportioned the Senate of said legislature. A copy of said bill is attached hereto as Exhibit II.

4. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971, except for District 22 (Hinds County). District 22 shall have five (5) senators, each of whom shall be a resident of one of the five supervisors districts. All five senators shall be elected county-wide.

WHEREFORE, Defendants move the Court to accept this submission pursuant to its January 4, 1973 Order for Deferment and to approve the attached apportionment plan, being House Bill No. 446 and Senate Bill No. 1701 of the 1973 Regular Session of the Mississippi Legislature and Exhibits I and II to this motion.

Respectfully submitted,

A. F. SUMMER, ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI
WILLIAM A. ALLAIN, FIRST ASSISTANT
ATTORNEY GENERAL OF THE STATE OF
MISSISSIPPI
HEBER A. LADNER, JR.
SPECIAL ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

/s/ By: A. F. Summer
A. F. SUMMER
ATTORNEY GENERAL OF THE
STATE OF MISSISSIPPI
P. O. Box 220
Jackson, Mississippi 39205

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Amended Submission Pursuant to Order for Deferment and Motion for Approval of Apportionment of the Mississippi Legislature

[TITLE OMITTED IN PRINTING]

[FILED APRIL 12, 1973]

Pursuant to Order of this Court dated January 4, 1973, defendants hereby file an Amended Submission replacing that of February 9, 1973, and move this Court for approval of the legislative apportionment plan enacted by the Mississippi Legislature in the Regular Session of 1973 as approved by the Governor on April 6, 1973, and for cause would show unto the Court the following, to-wit:

1. That the Mississippi Legislature enacted House Bill No. 1389 which apportioned the House of Representatives of said Legislature. A copy of said bill is attached hereto as Exhibit I.

2. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971. Those three districts, namely, Hinds, Harrison, and Jackson Counties, referred to the Legislature for revision by the Order for Deferment are now apportioned as follows:

A. District 31, being Hinds County, shall have twelve representatives designated as Posts 1-12 who shall be elected district wide.

B. District 45, being Harrison County, shall have seven representatives designated as Posts 1-7 who shall be elected district wide.

C. District 46, being Jackson and George Counties, shall have six representatives designated as Posts 1-6 who shall be elected district wide.

3. That the Mississippi Legislature enacted Senate Bill No. 2452 which apportioned the Senate of said Legislature. A copy of said bill is attached hereto as Exhibit II.

4. That said apportionment plan conforms in all respects to this Court's plan of May 18, 1971. That district, being District 22, covered by this Court's Order for Deferment is now composed of five senators chosen district wide and elected by posts.

WHEREFORE, defendants move the Court to accept this Amended Submission pursuant to its January 4, 1973 Order for Deferment and to approve the attached apportionment plan, being House Bill No. 1389 and Senate Bill No. 2452 of the 1973 Regular Session of the Mississippi Legislature and Exhibits I and II to this Motion.

Respectfully submitted,

A. F. SUMMER
ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

WILLIAM A. ALLAIN
FIRST ASSISTANT ATTORNEY GENERAL
OF THE STATE OF MISSISSIPPI

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Motion for Continuance

[TITLE OMITTED IN PRINTING]

[FILED APRIL 17, 1973]

Plaintiffs, by their attorneys, move the Court for a continuance for two months of the hearing in the above-styled action set for April 20, 1973, on the following grounds:

1. All preparation for the hearing on April 20, 1973, has proceeded on the assumption that the issue at the hearing would be the constitutionality of House Bill 446 and Senate Bill 1701, previously filed with the Court and served on counsel for the plaintiffs on or about February 10, 1973. Counsel for the defendants now have filed an amended submission consisting of House Bill 1389 and Senate Bill 2452 "replacing that of February 9, 1973" (Amended Submission, p. 1), served on counsel for the plaintiffs on April 11, 1973. These new bills came somewhat as a surprise. They were introduced in the Mississippi House of Representatives and Senate well after the deadlines for filing of new legislation, and were rapidly passed by both houses in late March, near the end of the session. They were not signed into law by the Governor until April 6, 1973 (Amended Submission, p. 1). The effect of House Bill 1389 and Senate Bill 2452 is to repeal and supersede the previous reapportionment legislation submitted to the Court, viz., House Bill 446 and Senate Bill 1701. The bills which are now before the Court raise issues which are different from the issues raised in the previous submission, and therefore require different preparation and the development of different litigation planning on the part of counsel for the plaintiffs. The February submission raised the issues of subdistricts within Hinds, Harrison, and Jackson counties, and of floterial districts affecting those counties; the

amended submission of April 11, 1973, now raises issues of multi-member, at-large districts affecting those counties, which were not contained in the February submission. Counsel for the plaintiffs therefore need additional time to prepare and file objections to House Bill 1389 and Senate Bill 2452 (the normal procedure within the Southern District is to permit 30 days for the filing of objections), to frame the issues presented by this new legislation, and to prepare for trial on the issues presented by the new submission.

2. The Mississippi Legislature has now convened and adjourned without finally enacting reapportionment legislation providing for single-member districts in Hinds, Harrison, and Jackson Counties, which this Court determined should be done in its opinion of May 18, 1971, 330 F. Supp. 506, 519, and which determination was endorsed by the United States Supreme Court twice, 402 U.S. 690 (1971), 409 U.S. 549 (1972). We are requesting this continuance to give us additional time to present to the Court, or to a Special Master, plans which provide for single-member districts in Hinds, Harrison, and Jackson Counties and which are feasible and workable. In addition, we believe that the span of 62.96 percentage points of variance for the House (caused by the use of floterial districts) and 20.26 percentage points of variance for the Senate (again, caused by using floterial districts) in House Bill 1389 and Senate Bill 2452 can be eliminated, and the racially discriminatory effects of the frequent use of multi-member districts in those bills deleted, through single-member districts throughout the State, and we need additional time for the development of such a plan for both houses.

3. Counsel for the plaintiffs have been in contact with and have contracted with an expert and professional person, Dr. David Valinsky, for the preparation of reapportionment plans providing for single-member districts in

the House and Senate. Dr. Valinsky prepared the single-member reapportionment plan which was accepted by the three-judge district court in *Sims* v. *Amos,* 336 F. Supp. 924 (M.D.Ala. 1972), and *affirmed per curiam* by the United States Supreme Court *sub nom. Baxley* v. *Sims,* 41 U.S.L.W. 3229 (Oct. 10, 1972, Ho. 72-147). Dr. Valinsky has ordered Census data and has estimated that such a plan for Mississippi can be prepared in two months. Hence, plaintiffs are requesting a two month continuance to develop such a plan and to be in a position to show the Court that such a plan would be superior to the latest submission, both as to providing greater equality of population among the districts and to eliminating the racially discriminatory effects of the Legislature's plan, and would be feasible and workable.

4. No harm can come to the defendants from the granting of the continuance. The 1971 legislative elections were conducted under the interim plan order by the Court on May 18, 1971, and on appeal the Supreme Court refused to disturb those elections. The next regular legislative elections do not come until the spring of 1975. Thus, there is sufficient time to allow a continuance of two months, try the case, permit a decision, and to permit any appeals from any decision before the next legislative elections are to be held.

[Certificate of Service Omitted in Printing]

[From Transcript of February 7, 1975 Proceedings]

[TITLE OMITTED IN PRINTING]

[5] [By Judge Coleman] unique features. Then they concluded down at the last, we hold today that unless there are persuasive justifications a Court ordered reapportionment plan of a state legislature must avoid the use of multi-member districts, and as well must ordinarily achieve the goal of population equality with little more than deminimus variation. Now I don't think there is anything so complex or abstruse about that that anybody could fail to understand it. It says that if it is left for this Court to act or for any other Federal Court to act we must avoid the use of multi-member districts and we must hold population equality to little more than deminimus variation where important and significant state considerations rationally mandate departure from these standards it is the reapportioning court's responsibility to articulate precisely why a plan of single member districts with minimal population variance cannot be adopted, and they say again that just exactly what we have said way back years ago in Conner V. Johnson, we say once again what has been said on many occasions, reapportionment is primarily the duty and responsibility of the state through its legislature or other body rather than a Federal Court. That in Mayhan V. Howell, the Virginia case, the Supreme Court set down some various

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[16] [By Mr. Parker] the Chairman of the Senate Rules Committee which happens to be the Lieutenant Governor. Secondly, we have deposition and proof showing that there are literally hundreds of alternatives even using the criteria employed by the legislature of maintaining county lines intact, there are literally hundreds of alternatives that will provide greater equality of population.

BY JUDGE COLEMAN:

Let me ask you if you are contending, for the benefit of the record, that we should break county lines and something that has never been done in all of the history of Mississippi and which under the language of, I think, or spirit of Chatman V. Myer is not required? Are you all seeking to have us break county lines?

BY MR. PARKER:

Yes, Your Honor, that is our plan. We have two proposed statewide single member districts plans which do provide for breaking of county lines that are modeled after the plan that was approved by the Supreme Court in Alabama under Kenneth versus Amos, and that is the relief that we are requesting the Court to order at this time.

BY JUDGE COLEMAN:

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[27] [By Judge Coleman] Myer the Supreme Court of the United States is sending word to all legislatures that they want the Federal Courts out of this business of reapportioning the legislature and they want the legislature to perform the function which primarily belongs to them, and if the legislature does not do it acceptably and in a constitutional fashion then they are going to be put in a straight-jacket, to-wit: there will be single member districts, they have got to be of substantially equal population, although there are all other kind of elasticities that they can avail themselves of if they act on their own under Mayhan V. Howell and these other decisions which the Supreme Court has handed down.

BY MR. SUMMER:

Yes, sir.

BY JUDGE COLEMAN:

I don't think there's any necessity under Mayhan V. Howell to cross the county line in a legislative reappor-

tioning case, although I realize Mr. Parker contends to the contrary and the Supreme Court might ultimately say so, but the Supreme Court has never said so except by affirming plans that aren't already been adopted by somebody else.

By Mr. Summer:

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[113] Q. [By Mr. Parker] Did you check that? A. [By Dr. Velinsky] That has been verified.

Q. Do you know whether or not it's consistent with Mississippi population and economic growth conditions? A. Fairly recently I received a document which was rather interesting.

By Judge Coleman:

I must say to you, counsel, if I had known we were going to get into all this on a conditional admission I never would have permitted the Doctor to testify. This is just not helping us at all to come to grips with the chief issue which is whether or not the present reapportionment of the legislature is enacted by that legislature, is legal and constitutional. I realize he has no option except but to answer your questions, but let's please sort of stick to the issue before the Court, please, sir.

By Mr. Parker:

Your Honor, I think the point of the testimony is that it is feasible to draw a plan in Mississippi with a variance of 5.39 for the House and 3.39 for the Senate.

By Judge Coleman:

Well there is no doubt that it is if you are willing to fracture state lines, I mean county lines, which [114] is something that has never been done in the history of the state, and as you very correctly remarked at the outset of these proceedings we have had districts within counties, but there has never been an instance in the one hundred and, since 1817, in which county lines were broken for legislative and senatorial districts. Now the Supreme

Court of the United States told a three judge District Court in North Dakota you can't foist a policy on North Dakota of requiring them to have multi-member districts when their policy has always been to have single. By analogy I don't think this Court has the authority to foist upon the people of Mississippi senatorial and representative districts fracturing the county lines in violation of the undisputed, unchallenged tradition and policy of the state for over a hundred years, yet the plan which you have had the doctor to fix up here would do just exactly that.

By Mr. Parker:

Let me, in response to that, Your Honor, let me make one point for the Court's consideration. It seems to me that using counties as a basis for legislative districts in the state policy of countywide voting for the legislature would be unconstitutional and could not be adopted or followed by the court in one situation,

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[148] [By Judge Coleman] admitted? It has been admitted, Mr. Parker, so there is no question about that.

By Mr. Parker:

Thank you, Your Honor.

By Judge Coleman:

What do you propose to examine him about?

By Mr. Summer:

We propose to examine him about the studies that the legislature made and which he was involved in and how they came about making a report.

By Judge Coleman:

You may proceed.

DIRECT EXAMINATION

BY MR. SUMMER:

Q. Mr. Barefield, I would like to hand you this instrument and ask you to identify it, if you will, please, sir.

BY MR. PARKER:

Could I see it first, please?

(Document handed to counsel for plaintiffs.)

BY MR. PARKER:

That's not an original certification. Your Honor, these appear to be one, two, three pages of the House Journal, House of Representatives of the State Legislature. I believe the Court will take judicial notice of entries in the House Journal.

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[150] [By Mr. Summer] come up with a reapportionment plan? A. [By Mr. Barefield] Yes, sir, the 1972 session of the legislature authorized the creation of an interim study committee to study the problems involved in reapportionment, which we did, and held that study during the summer and fall of 1972 and reported to the legislature, I believe, in January of 1973.

Q. Were you a member of that committee? A. Member of that committee and Chairman of that committee.

Q. Did you attend most or all of the sessions? A. I attended all of the sessions, yes, sir.

Q. All of the sessions, so you were present during the entire proceeding? A. Yes, sir.

BY MR. SUMMER:

I believe that there has already been introduced, if the Court please, a copy of this legislative report, and I'm not sure.

BY JUDGE COLEMAN:

You may reintroduce it as a defendant's exhibit if you wish and that will settle that.

BY MR. SUMMER:

I think with permission to reintroduce the copy. We do not have the original. We do have the original.

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[153] [By Judge Coleman] allowed to file any objection thereto after the filing if he so advise.

BY MR. SUMMER:

Thank you, sir.

Q. Now, Mr. Barefield, if you will just proceed to tell the Court what this legislative committee did and how you all came to do what you did? A. Well, the Interim Study Committee Report was created by the '72 legislature, as I said, following a decision of this Court after the case came back from the United States Supreme Court, I think it was obvious that the Mississippi Legislature had to address itself to the question of legislative reapportionment. We did so. That committee met on numerous occasions. It had witnesses of various sorts, attorney general's staff, Mr. Bill Neal, Mr. George Peachtaylor, other interested parties, it used the computer processes of the State Government to run out population figures, to establish certain guidelines which guided the committee and how they would go about and what their goals were, guidelines set out beginning on Page 5 of the report. Those guidelines were followed by the committee throughout the process. My recollection is that notwithstanding all that work when we got down to an actual vote the committee when it, with reference

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[155] [By Mr. Barefield] that fashion, all of this being done in response to an order of this Court, I believe dated

sometime in the early part of January of '73 to report by February 10th, I believe, the Governor actually signed 446 on February 9th.

BY JUDGE COLEMAN:

As I recall it, we entered an Order saying if the legislature did not act within a certain time then we would proceed to act.

BY THE WITNESS [Mr. Barefield]:

Yes, sir, that is my recollection. At that point I think we all thought our problems were over. As I remember probably some four or six weeks later the Supreme Court handed down the Mayhan case and that just created the disturbance all over again, because then the reaction in the legislature was to the point that perhaps the 446 went further than the legislature was required to go, because the Mayhan case spoke to political lines, county lines, boundary lines and this sort of thing, and at that point new legislation was introduced and I forget the number of the final bill that was passed and the one before the Court today, was finally passed through the House and the Senate going back and permitting representatives in Hinds County to run county at large, Hinds, Harrison and

. . . . . .

Report of Committee on Elections of Mississippi State Senate on Senate Bill No. 2976
[Exhibit from Hearing of May 5, 1975]

The Committee on Elections of the Mississippi State Senate recognizes and accepts that legislative reapportionment is primarily the duty and responsibility of the Mississippi Legislature. The committee, therefore, has reported Senate Bill 2976 and additionally submits this report in an attempt to discharge such duty and responsibility according to the Constitution of the United States as enunciated in the most recent decisions of the Supreme Court applicable to reapportionment of state legislatures.

The committee has studied decisions of the United States Supreme Court, including the landmark ruling in *Reynolds* v. *Sims*, 377 U.S. 533 (1964), and the more recent decisions in *Whitcomb* v. *Chavis*, 403 U.S. 124 (1971), *Mahon* v. *Howell*, 410 U.S. 315 (1973), and *Chapman* v. *Meier* (1975). The committee has also studied the line of decisions styled *Connor* v. *Johnson* and *Connor* v. *Williams* which embody the decisions of the United States District Court and the United States Supreme Court on the matter of reapportionment of the Mississippi Legislature. In addition, the committee has reviewed the proposals for reapportionment submitted by Mayor Charles Evers and the proposal submited to the United States District Court by the plaintiffs in *Connor* v. *Waller* as well as other methods advanced or used for accomplishing such reapportionment.

The committee, in its earliest deliberations, considering the manner in which counties are structured and governed in Mississippi and the need to quite frequently pass legislation dealing only with particular counties, determined that the policy of maintaining the integrity of county lines in establishing legislative districts should be continued.

It might be pointed out that county lines have remained unchanged with only a few exceptions since 1890, and that the Legislature and courts, since the Constitution of 1890,

have recognized the integrity of county lines in establishing legislative districts. Mayor Charles Evers of Fayette, Mississippi, appearing before the Senate Elections Committee as the leader of a delegation concerned with the reapportionment, likewise concurred that the integrity of county lines should be maintained. The committee, desiring to respect county lines, nevertheless is aware and recognizes that it is under a constitutional duty to "make an honest and good faith effort to construct legislative districts in both Houses of its Legislature as nearly equal in population as is practicable," *Mahon* v. *Howell,* supra. This we have done our very best to do. We have also sought to reduce multi-member districts as much as possible, still giving effect to the one-person, one-vote requirement of the United States Constitution, and attempted to continue the policy of this state to maintain the integrity of political subdivision lines in the reapportionment of legislative seats. We have sought to produce a minimum deviation above and below the norm, keeping political boundaries intact.

House Bill 1290, 1975 Regular Session, which reapportions the House of Representatives deviates from the policy of putting an entire county in a legislative district in order to avoid a multi-member House district of twelve (12) members in Hinds County. Even in this instance, the integrity of the county line was maintained, and the Representatives were required to be residents of and elected by supervisors' beats, the beat being a political subdivision of the county.

The committee recognizes, pursuant to the decision in *Mahon* v. *Howell,* supra, that the state may utilize different criteria for determining the method of apportioning seats in the Senate and House and still comply with constitutional requirements. Since the county is such a basic unit of government in Mississippi, and since so much legislation is passed by the Legislature which directly affects the individual county as a whole and so much legislation is passed

which directly affects each and every county in the state as a whole, and since very seldom is legislation passed affecting only parts of a county, and since 10 of the 12 Representatives from Hinds County are to be elected by beats and only 2 Representatives from Hinds County are to be elected at large, the committee has determined that the 5 Senators from Hinds County should be elected at large. To require that the Senators from Hinds County be elected by and from beats of the county would mean that not a single Senator from Hinds County would be elected to represent Hinds County as a whole. The United States Supreme Court in *Mahon* v. *Howell,* supra approved two five-member senatorial districts established by the Legislature in Virginia. It is the sense of this committee that, in the event Hinds County should ever elect more than 5 Senators, a different policy should prevail.

Although not a predominant reason for the present reapportionment proposed in Senate Bill 2796, the committee would point out that the proposal results in as little change as possible from present legislative districts and yet complies with the state policy of maintaining the integrity of political subdivision lines and the requirements of the United States Constitution. The committee believes this fact to be beneficial. By changing districts only when necessary to carry out such state policy and to comply with constitutional provisions, the voters of a district are not confused by frequent changes of districts and have a better opportunity of evaluating whether or not a legislator has done a good job and should be returned, or that he has done a poor job and should be retired. Hopefully this factor will result in better, more responsible, representative government in Mississippi.

This committee recognizes that legislative reapportionment should again be accomplished immediately after the 1980 census unless necessitated by changing facts prior to such time in order to comply with constitutional mandates.

In attempting to achieve compliance with the one-person, one-vote requirement, this committee was confronted with the utter impossibility of arriving at mathematical exactness and still maintaining the integrity of political subdivision lines. According to the interpretation of the provisions of the Constitution by the United States Supreme Court, we are advised and are aware that state legislative districts must be as nearly equal as practicable though mathematical exactness is not required, and this we have attempted to achieve.

The committee heard testimony from Mayor Charles Evers regarding reapportionment. In addition, the committee studied a plan for reapportionment which he submitted in behalf of himself and his delegation. The committee determined that Mayor Evers' proposed Senate apportionment was unacceptable because of the large deviations from the norm and because of the very high total variance.

The proposal created District 27 composed of Neshoba, Newton and Jasper Counties having a total population of 55,779. This district was allocated one (1) Senator, thereby having a population of 13,145 or 30.8% above the norm of 42,634 for one (1) Senator. Other large deviations above the norm include 25% for District 32 composed of Hancock, Pearl River and Stone Counties, 17.9% for District 38 composed of Lincoln, Lawrence and Jefferson Davis Counties, and 15.9% for District 18 composed of Bolivar County.

Mayor Evers' proposal created District 13 composed of Clay and Chickasaw Counties having a total population of 35,651. This district was allocated one (1) Senator, thereby having a population of 6,983 or 16.4% below the norm of 42,634 for one (1) Senator. Other large deviations below the norm include 15.8% for District 1 composed of DeSoto County, 15% for District 23 composed of Sharkey and Yazoo Counties, and 14% for District 20 composed of Washington and Issaquena Counties.

The maximum positive deviation of 30.8% and the maximum negative deviation of 16.4% yield a variance of 47.2% from the negative to the positive. In view of the decisions of the United States District Court styled *Connor* v. *Johnson* and *Connor* v. *Williams*, the committee feels that Mayor Evers' proposal will not meet the criteria of that court. Further, the committee feels that the total variance of 47.2% is not acceptable under decisions of the United States Supreme Court which has rejected proposals having a total variance of much less than 47.2%.

The committee also considered a proposal for reapportionment which was presented to the United States District Court by the plaintiffs in the action currently pending before that court styled *Connor* v. *Waller*.

This proposal admittedly achieves a greater mathematical exactness than does the proposal reported by the committee in Senate Bill 2976, but the committee feels that the final product of the plaintiff's proposal is impracticable and unworkable. In the plaintiffs proposal, the maximum deviation above the norm is 1.66% found in District 18 composed of Clay County and part of Oktibbeha County. The maximum deviation below the norm is 1.73% found in District 52 composed of a part of Jackson County. The total variance therefore is only 3.39% from the maximum negative deviation of 1.73% to the maximum positive deviation of 1.66% a figure which the committee would be pleased to approve if the apportionment structure which yields that low variance were otherwise practicable.

The plaintiffs proposal initiates a new reapportionment procedure for Mississippi—the division of counties and even of beats within counties for the purpose of establishing legislative districts. A review of the plaintiff's proposal indicates that 40 of the 52 districts or 77% of the districts created by the plaintiffs cross county lines and that 46, or 89%, of the new districts cross supervisor's beat lines within the county in creating the districts. Only 4 proposed

districts, Districts 1, 12, 21 and 22 are composed of counties which are not divided or are composed of a subdivision of a county.

The plaintiff's proposal utilizes census enumeration districts as the basic unit for determining the population of a legislative district. Voters in the district would therefore have to vote in new precincts based upon enumeration districts. In essence, the Legislature by adopting a proposal based upon these enumeration districts would, of necessity, be establishing or creating voting precincts. This prerogative or power is a traditional function of local government and not the legislature, and the committee feels that to adopt a plan based upon enumeration districts would be an abridgment and abrogation of that traditional function.

Further, an apportionment structure based upon enumeration districts which are subject to change with each new census would require a contemporaneous change in voting precincts. The committee feels that to use enumeration districts would result in chaos at the polls, perhaps even in a re-registration of voters by virtue of the creation, division and change of voting precincts, a power which previously in this report has been recognized as a function of local government. The committee feels that the use of enumeration districts would impose unwarrented hardship on voters and election officials in Mississippi.

From its admission into the Union in 1817, Mississippi has structured Senate districts along county lines. There have been no exceptions. No Senate district has ever been created by combining parts of one (1) county with portions of another because the county is the basic, traditional governmental unit upon which the state is organized and through which such primary functions as courts, taxation and elections are and have been conducted.

The plaintiff's proposal was not approved by the committee because the committee did not want to abrogate the

historical state policy of creating Senate districts coinciding with county lines, because the committee did not want to abridge the traditional power of local government to establish voting precincts and because the committee did not want to create unnecessary confusion and impose an unwarranted hardship upon voters and election officials by structuring voting precincts on enumeration districts which are subject to frequent change.

In the proposed reapportionment embodied in Senate Bill 2976 the committee allocated legislative seats to specific counties when the population of the county was sufficient to entitle the county to seat by itself. The following districts are single-county, single-member districts with a population of approximately 42,000 and which are so situated geographically and so near the norm that the combination with another county is not necessary:

DISTRICT	POPULATION		NUMBER OF SENATORS
District 5 Lee County	46,148	+8.2%	1
District 10 Coahoma County	40,447	−5.1%	1
District 13 Leflore County	42,111	−1.2%	1
District 21 Rankin County	43,933	+3.0%	1
District 23 Warren County	44,981	+5.5%	1

The following districts are single-county districts which have populations equivalent to multiples of the norm for one (1) Senator and are so situated geographically that the combination with another county is not necessary:

DISTRICT	POPULATION		NUMBER OF SENATORS
District 22 Hinds County	214,973	+0.84%	5
District 32 Harrison County	134,582	+5.2%	3
District 33 Jackson County	87,975	+3.2%	2

The committee approved a residence requirement in District 27 composed of Covington, Jefferson Davis, Lawrence, Marion and Jones Counties as follows: Post 1 to be a resident of and elected by Jones County, Post 2 to be a resident of and elected by the remaining counties, and Post 3 to be a resident of any county and elected by all counties. The residence requirements were imposed because Jones County has more than sufficient population to entitle it to one (1) Senator. The remaining counties have more than sufficient population to entitle them to one (1) Senator. The entire district has sufficient population to entitle it to a third Senator.

The remaining districts are composed of more than one (1) county, and elect one (1) or more Senators without restrictions as to residence.

The above apportionment plan for the Senate has an average percentage variance of 6.12% with the average deviation above the norm being 6.45% and the average deviation below the norm being 5.63%. No district varies from the norm by as much as 10%, and sixteen of thirty-three districts vary by less than 5%.

Report of Committee on Apportionment and Elections on House Bill No. 1290
[Exhibit from Hearing of May 5, 1975]

The Apportionment and Elections Committee of the House of Representatives recognizes its primary responsibility, as recently emphasized by the Supreme Court of the United States in *Chapman* v. *Meier* (January 27, 1975) to effectuate legislative reapportionment in compliance with the requirements of the federal Constitution. The most recent guidelines for the reapportionment of state legislatures in compliance with the one-person, one-vote requirement of the federal Constitution have been enunciated by the Supreme Court of the United States in *Mahan* v. *Howell,* 410 U.S. 315 (1973) and in prior decisions. In *Mahan,* it was held that in reapportionment a state may pursue the rational objective of preserving the integrity of its political subdivision lines.

From the attainment of statehood in 1817, Mississippi has structured the apportionment of its Legislature on county lines. There have been only a few instances of the election of Representatives from a judicial district situated solely within a county. No district has ever been established by combining parts of one county with portions of others because the county is the basic, traditional governmental unit upon which the State is organized and through which such primary functions as courts, elections and taxation have been conducted.

The 1970 official census figures for the State of Mississippi reflects a population of 2,216,912. Section 254, Mississippi Constitution, provides for a membership in the House of Representatives of not more than one hundred twenty-two (122) members. The norm for one Representative in a 122-seat chamber is 18,171 people per Representative. Mississippi is composed of eight-two (82) counties. These counties constitute the political subdivisions from which the

people first exercise their political power through the election of local officials. Each county is divided into five (5) beats or districts which are the units of county government. The committee felt that it should adhere to county lines as the best, fairest and most effective method delineating districts for the election of the members of the House of Representatives of the State of Mississippi. To do otherwise would result in chaos at the polls, perhaps resulting in many cases of reregistration of voters, and the creation and division of voting precincts, none of which the State Legislature, under existing State statutes, has the authority to determine, such powers resting with local boards of supervisors within each county.

The committee allocated legislative seats to specific counties when the population of those counties was sufficient to entitle that county to one or more legislative seats by itself. The following districts are single-county districts with populations of approximately 18,000 and which are so situated geographically that the combination with another county is not necessary; therefore, each is allocated one legislative seat.

District	Population	Number of Representatives
District 5 Chickasaw County	16,805	1
District 6 Pontotoc County	17,363	1
District 7 Union County	19,096	1
District 10 Tate County	18,544	1
District 12 Tallahatchie County	19,338	1

District 19 Attala County	19,570	1
District 20 Winston County	18,406	1
District 22 Clay County	18,840	1
District 36 Simpson County	19,947	1
District 41 Wayne County	16,650	1
District 44 Hancock County	17,387	1

The following districts are single-county districts which have populations equivalent to multiples of the norm for the State and are so situated geographically that the combination with another county is not necessary. (Hinds and Harrison Counties are treated separately hereafter.)

District	Population	Number of Representatives
District 13 Sunflower County	37,047	2
District 14 Bolivar County	49,409	3
District 33 Adams County	37,293	2
District 40 Jones County	56,357	3

In the following districts the designated county in each listed district has at least 33⅓% more than enough population to elect a Representative in its own right in compliance with the State norm; therefore, the committee estab-

lished requirements of residing in the following designated counties, with the election to be held district wide:

District 8 (2 Representatives)

Lafayette County (24,181)
Calhoun County (14,623)
Only residents of Lafayette County shall qualify as candidates for Post 1.

District 9 (2 Representatives)

Panola County (26,829)
Yalobusha County (11,915)

Only residents of Panola County shall qualify as candidates for Post 1.

District 29 (2 Representatives)

Yazoo County (27,304)
Sharkey County (8,937)

Only residents of Yazoo County shall qualify as candidates for Post 1.

District 32 (2 Representatives)

Copiah County (24,749)
Jefferson County (9,295)

Only residents of Copiah County shall qualify as candidates for Post 1.

District 43 (2 Representatives)

Pearl River County (27,802)
Stone County (8,101)

Only residents of Pearl River County shall qualify as candidates for Post 1.

The committee established residency requirements in the following districts for the reasons enumerated:

District 1 (3 Representatives)

Alcorn County with a population of 27,179 has more than enough population to meet the norm for one legislative seat. Benton and Tippah Counties with a combined population of 23,357 have more than enough population to meet the norm for one seat. The surplus population is enough for a third seat; therefore, Alcorn shall elect one Representative, Post No. 1; Benton and Tippah Counties shall elect one Representative, Post No. 2; and Post No. 3 shall be elected from the district at-large.

District 4 (5 Representatives)

Lee County (46,148)
Monroe County (34,043)
Itawamba County (16,847)

Lee County has 26% more population than required for two legislative seats. Monroe County lacks 7% having enough population for two legislative seats. Itawamba County lacks 8% of enough population for one seat. Therefore, Lee County shall elect two representatives, Posts 1 and 2; Monroe County shall elect one Representative, Post 3; Itawamba County shall elect one Representative, Post 4; and one Representative, Post 5, shall be elected from the district at-large.

District 11 (4 Representatives)

Coahoma County (40,447)
Quitman County (15,888)
Tunica County (11,854)

Coahoma County has more than enough population to meet the norm for two seats. Quitman and Tunica Counties have more than enough population for one seat. The sur-

plus is enough for a fourth seat. Therefore, Coahoma County shall elect two Representatives, Posts 1 and 2; the counties of Quitman and Tunica shall elect one Representative, Post 3; and one Representative, Post 4, shall be elected by the district at-large.

District 23 (5 Representatives)

Lowndes County (49,700)
Noxubee County (14,288)
Oktibbeha County (28,752)

To comply with the State norm as indicated for Districts 4 and 11, Lowndes County is allocated two Representatives, Posts 1 and 2. Noxubee and Oktibbeha Counties shall elect two Representatives designated Posts 3 and 4, with the candidates qualifying for Post 3 being residents of Oktibbeha County; and one Representative, Post 5, shall be elected from the district at-large.

District 24 (4 Representatives)

Kemper County (10,233)
Lauderdale County (67,087)

Kemper County had two Representatives from 1890 until 1964. Kemper County has only 43% of the norm for a Representative and is located on the Alabama line. If combined with Neshoba County, the district would be 14% below the norm; therefore, Kemper County must be combined with Lauderdale County, which has nearly seven times as much population. So as not to disfranchise the voters of Kemper County, all the candidates for Representative residing in Kemper County shall qualify for Post No. 4. The election shall be from the district at-large.

District 25 (3 Representatives)

Newton County (18,983)
Clarke County (15,049)
Jasper County (15,994)

Newton County has enough population to meet the norm for one seat. Clarke and Jasper Counties have enough population for one seat. The excess population warrants a third Representative; therefore, Newton County shall elect one Representative, Post No. 1; Clarke and Jasper Counties shall elect one Representative, Post No. 2; and one Representative shall be elected from the district at-large, Post No. 3.

District 26 (2 Representatives)

Leake County (17,085)
Neshoba County (20,802)

Leake County has a population of 6.5% under the required norm and Neshoba County has a population of 14.5% in excess of the norm; therefore, the Representatives are to be elected district wide with only residents of Neshoba County qualifying for Post 1 and only residents of Leake County qualifying for Post 2.

District 28 (4 Representatives)

Madison County (29,737)
Rankin County (43,933)

Madison County shall elect one Representative designated Post 1; Rankin County is allocated two Representatives, Posts 2 and 3; the excess population warrants a fourth Representative which shall be designated as Post 4 and shall be elected district wide.

District 35 (3 Representatives)

Pike County (31,756)
Lincoln County (26,198)

Pike County should be allocated one Representative, Post 1; Lincoln County should be allocated one Representative designated Post 2; the excess population warrants a third Representative, Post 3, which shall be elected district wide.

Based upon the finding and reasons hereafter set forth, the committee determined that the following districts should elect their respective Representatives by at-large elections without imposing residency requirements for specific posts.

District 2 (2 Representatives)

Tishomingo County with a population of 14,940 is combined with Prentiss County with a population of 20,133. The district has a population which warrants two seats. Tishomingo County's population is 17.8% below the norm for one legislative seat while Prentiss County has a population of 10.8% above the norm, and exceeds the population of Tishomingo by only 5,193; therefore, the voters of Tishomingo could not be substantially overpowered by the voters of Prentiss so as to warrant a residency requirement for Tishomingo County, and Prentiss being only 10.8% above the norm and exceeding the population of Tishomingo County by only 5,193 does not warrant a residing requirement therefore the two Representatives should reside anywhere within the district and be elected at-large.

District 3 (3 Representatives)

Marshall County with a population of 24,027 is combined with DeSoto County with a population of 35,885. Both counties have individual populations in excess of the norm. In that the population of each is substantially above the norm and differs by only 11,758 the three Representatives shall be elected from the district and shall reside anywhere within the district.

District 15 (4 Representatives)

Issaquena with 2,737 is combined with Washington with 70,581. Issaquena has a population 84.9% below the norm and does not justify a residency requirement being imposed

for that county; therefore, the four Representatives shall reside in and be elected from the district at-large.

District 16 (2 Representatives)

Humphreys County with a population of 14,601 is combined with Holmes County with a population of 23,120. The district has a populaton which warrants two seats. Humphreys County is 19.6% below the norm for one seat while Holmes County has a population 27.2% above the norm for one seat, and exceeds the population of Humphreys County by only 8,519; therefore, the voters of Humphreys County could not be so substantially overpowered by the voters of Holmes County so as to justify a residency for Humphreys. In that Holmes has a population of only 8,519 more than Humphreys and less than ⅓ in excess of the norm for one seat, the two Representatives shall reside anywhere in the district and be elected district at-large.

District 17 (3 Representatives)

Carroll County with a population of 9,397 is combined with Leflore County with a population of 42,111. Carroll's population is 48.3% below the norm while Leflore County has more than is required for two seats. Carroll being 48.3% below the norm for one seat does not justify a residency in that county but so as not to disfranchise the electorate of Carroll County no residency requirements should be imposed in favor of Leflore County; therefore, the three Representatives to be elected from this district shall reside anywhere in the district and be elected by the district at-large.

District 18 (2 Representatives)

In compliance with the norms and variances set forth for Districts 2 and 16, Grenada with a population of 19,584 and Montgomery with a population of 12,918, shall elect two Representatives district wide with residency anywhere in the district.

District 21 (1 Representative)

Choctaw with a population of 8,440 is combined with Webster with a population of 10,047. The combined district population is approximately equivalent to the state norm for one Representative. A residency requirement in a specific county is not justified in that the population of each county is by itself substantially below the norm for the state and the populations of the two counties vary by only 1,607.

District 27 (2 Representatives)

In compliance with the norms and variances set forth for districts 2, 16 and 18, Scott with a population of 21,369 or 17.6% above the norm for one seat, is combined with Smith with 13,561 or 25.4% below the norm for one seat and there being a variance in population of only 7,808, the two Representatives shall reside anywhere in the district and be elected from the district at-large.

District 30 (3 Representatives)

Claiborne County with a population of 10,086 is combined with Warren County with a population of 44,981. Claiborne's population is 44.5% below the norm. Warren County has 8,639 more than the number required for two seats. Claiborne being 44.5% below the norm for one seat does not justify a residency in that county but so as not to disfranchise the voters of Claiborne no residency requirements should be imposed in favor of Warren; therefore, the three Representatives shall reside anywhere in the district and be elected district at-large.

District 34 (2 Representatives)

Amite with a population of 13,763 is combined with Franklin with 8,011 and Wilkinson with 11,099. All three counties have insufficient populations individually to have one Representative but are substantially close in population to assure relative equal voting strength; therefore, the two Representatives shall reside in the district and be elected district wide.

District 37 (2 Representatives)

Covington with a population of 14,002 is combined with Jefferson Davis with a population of 12,936 and with Lawrence with a population of 11,137. This district bears great similarity with District 34 as to population, deviations below the norm and variances among the individual county population, therefore, for the reasons set forth for District 34, the two Representatives elected from District 37 shall reside anywhere in the district and be elected by the district at-large.

District 38 (2 Representatives)

In compliance with the norms and variances set forth for district 2, 16, 18 and 27, Marion with a population of 22,871 is combined with Walthall with 12,500, with the two Representatives allocated to this district being residents of the district and elected district at-large.

District 39 (4 Representatives)

Lamar County with a population of 15,209 has 84% of the norm for a Representative. It must be combined with Forrest County with a population of 57,859. In view of Lamar's nearness in population to the norm, together with the fact that Hattiesburg, Mississippi, is situated in both counties, it becomes necessary in order not to disfranchise the electorate of Lamar County, that no residency requirement should be imposed in favor of Forrest County; therefore, all four Representatives to be elected from this district may reside anywhere in the district and may be elected by the district at-large.

District 42 (1 Representative)

Greene with a population of 8,545 is combined with Perry with a population of 9,065 in compliance with the deviations below the norm and the variances set forth in District 21, the one Representative allocated to District 42 shall reside anywhere in the district and be elected district at-large.

District 31 (12 Representatives)

Hinds County (214,973)

This is clearly the largest county in the State. The United States District Court is currently considering the redistricting of the supervisors districts of Hinds County in *Kirksey* v. *Board of Supervisors of Hinds County,* Civil Action No. 4939, and shall in the immediate future render a decision which shall establish the supervisors district lines for this county; therefore, in view of the upcoming proper apportionment of the supervisors districts of Hinds County, the committee feels it in the best interest of the State if the twelve House members allocated to Hinds County be so allocated on the following basis: two Representatives shall reside within and be elected from each of the five supervisors districts of Hinds County, and two members to reside within the county and be elected by the county at-large. In elections to be held in 1975 the Representatives to be elected from Hinds County, except those elected from Posts 11 and 12, shall be elected as provided above from said supervisors districts as said districts are determined or approved by the Court in *Kirksey* v. *Board of Supervisors of Hinds County,* regardless of any modifications to said districts brought about by appellate review.

In all legislative elections held subsequent to 1975, the Representatives to be elected from District 31 (except those elected from Posts 11 and 12) shall be elected as provided above from said supervisors districts as said districts are finally determined or approved by the district court or as

approved or modified by the appellate courts in the event of appeal.

District 45 (7 Representatives)

Harrison County (134,582)

The United States District Court has acquired jurisdiction over the redistricting of the supervisors districts of Harrison County in *Reed* v. *Quave,* Civil Action No. 3146. The Court determined that the 1970 census did not accurately reflect the population of the individual supervisor district in that the devastating effect of Hurricane Camille in August, 1969, had resulted in a temporary shift in the population of Harrison County, making it impossible to ascertain with any degree of accuracy the population of the respective supervisor districts; thus the Court in *Reed* v. *Quave* found that the existing supervisor district lines remain intact until further order of the Court. In view of the existing uncertainty as to the populations of the individual supervisor districts, the committee feels it in the best interest of the State to require at-large elections for Representatives in Harrison County; therefore, the seven Representatives allocated to Harrison County shall be so allocated on the following basis: one Representative shall reside within each of the five supervisor districts and be elected by the county at-large, and two shall reside anywhere within the county and be elected by the county at-large.

District 46 (6 Representatives)

George County with a population of 12,459 is bordered on the east by Alabama. George County not having enough population to satisfy the norm, must be combined with Jackson County, which has a population of 87,975; therefore, because of the fact that the population of Jackson County is so much greater and overwhelms the population of George County, it is necessary that in order not to disfranchise the people of George County, that one of the six

Representatives allocated to this district shall reside in George County and be elected by the district at-large. The committee determined that the devastating effect of Hurricane Camille in August, 1969, resulted in a temporary shift in population of Jackson County, making it impossible to ascertain with any degree of accuracy the population of the respective supervisor districts of said county; therefore, the committee feels it to be in the best interest of the State to require that one Representative shall reside within each of the supervisor districts of Jackson County and be elected by both counties.

The above apportionment plan for the House of Representatives has an average percentage variance of 9.99%, with the average deviation above the norm being 4.45% and the average deviation below the norm being 5.54%. No district varies from the norm by as much as 10%, and twenty-one vary by less than 5%.

District No.	County or Counties	No. of Representatives	County Population	District Population	District Deviation
1	Alcorn	3	27,179	50,536	—3980 (—7.3)
	Benton		7,505		
	Tippah		15,852		
2	Prentiss	2	20,133	35,073	—1271 (—3.5)
	Tishomingo		14,940		
3	DeSoto	3	35,885	59,912	+5396 (+9.9)
	Marshall		24,027		
4	Itawamba	5	16,847	97,038	+6178 (+6.8)
	Lee		46,148		
	Monroe		34,043		
5	Chickasaw	1	16,805	16,805	—1367 (—7.5)
6	Pontotoc	1	17,363	17,363	— 809 (—4.5)
7	Union	1	19,096	19,096	+1734 (+5.1)
8	Calhoun	2	14,623	38,804	—2460 (—6.8)
	Lafayette		24,181		
9	Panola	2	26,829	38,744	+2400 (6.6)
	Yalobusha		11,915		
10	Tate	1	18,544	18,544	+372 (+2.1)
11	Coahoma	4	40,447	68,189	—4499 (—6.2)
	Quitman		15,888		
	Tunica		11,854		
12	Tallahatchie	1	19,338	19,338	+1166 (+6.4)
13	Sunflower	2	37,047	37,047	+703 (+1.9)
14	Bolivar	3	49,409	49,409	—5107 (—9.4)
15	Issaquena	4	2,737	73,318	+630 (0.87)
	Washington		70,581		
16	Holmes	2	23,120	37,721	+1377 (—3.8)
	Humphreys		14,601		
17	Carroll	3	9,397	51,508	—3008 (—5.5)
	Leflore		42,111		
18	Grenada	2	19,584	32,772	—3572 (—9.8)
	Montgomery		12,918		

District No.	County or Counties	No. of Representatives	County Population	District Population	District Deviation
19	Attala	1	19,570	19,570	+1398 (+7.7)
20	Winston	1	18,406	18,406	+234 (+1.3)
21	Choctaw Webster	1	8,440 10,047	18,487	+315 (+1.7)
22	Clay	1	18,840	18,840	+668 (+3.7)
23	Lowndes Noxubee Oktibbeha	5	49,700 14,288 28,752	92,740	+1880 (+2.1)
24	Kemper Lauderdale	4	10,233 67,087	77,320	+4632 (+6.4)
25	Clarke Jasper Newton	3	15,049 15,994 18,983	50,026	
26	Leake Neshoba	2	17,085 20,802	37,887	+1543 (+4.3)
27	Scott Smith	2	21,369 13,561	34,930	—1414 (—3.9)
28	Madison Rankin	4	29,736 43,933	73,670	+986 (+1.4)
29	Sharkey Yazoo	2	8,937 27,304	36,241	—103 (—0.27)
30	Claiborne Warren	3	10,086 44,981	55,067	+551 (+1.0)
31	Hinds	12	214,973	214,973	—3091 (—1.4)
32	Copiah Jefferson	2	24,749 9,295	34,044	—2300 (—6.3)
33	Adams	2	37,293	37,293	+949 (+2.6)
34	Amite Franklin Wilkinson	2	13,763 8,011 11,099	32,873	—3471 (—9.5)
35	Lincoln Pike	3	26,198 31,813	57,954	+3438 (+6.3)

District No.	County or Counties	No. of Representatives	County Population	District Population	District Deviation
36	Simpson	1	19,947	19,947	+1775 (+9.8)
37	Covington Jefferson Davis Lawrence	2	14,002 12,936 11,137	38,075	+1731 (+4.8)
38	Marion Walthall	2	22,871 12,500	35,371	—973 (—2.7)
39	Forrest Lamar	4	57,849 15,209	73,058	+370 (+0.52)
40	Jones	3	56,357	56,357	+1841 (+6.1)
41	Wayne	1	16,650	16,650	—1522 (—8.4)
42	Greene Perry	1	8,545 9,065	17,610	—562 (—3.1)
43	Pearl River Stone	2	27,802 8,101	35,903	—441 (—1.2)
44	Hancock	1	17,387	17,387	—785 (—4.3)
45	Harrison	7	134,582	134,582	+7378 (+5.8)
46	George Jackson	6	12,459 87,975	100,434	—8598 (7.9)

Positive		*Negative*	
District	Percentage	District	Percentage
3	9.9	18	9.8
36	9.7	34	9.5
19	7.7	14	9.3
4	6.8	41	8.4
8	6.8	25	8.2
9	6.6	46	7.9
12	6.4	5	7.5
24	6.4	1	7.3
35	6.3	32	6.3
40	6.1	11	6.2
45	5.8	17	5.5
7	5.1	6	4.5
37	4.8	44	4.3
26	4.3	27	3.9
16	3.8	2	3.5
22	3.7	42	3.1
33	2.6	38	2.7
10	2.1	31	1.4
23	2.1	43	1.2
13	1.9	29	0.27
21	1.7		
28	1.4		
20	1.3		
30	1.0		
15	0.87		
39	0.52		

[From Transcript of May 7, 1975 Proceedings]

[8] By Judge Coleman:

But it's not altogether as ancient as I got the impression from your original statement. Now, the next question I want to ask you while we are on this, from the beginning of the state government until the present day has there ever been any fracturing of county lines in the election of either representatives or senators to the Mississippi Legislature?

By Mr. Parker:

We have not been able to find any.

By Judge Coleman:

I think what it's going to come down to in the decision in this case is whether or not the legislature has in fact complied with the principles enunciated by the Supreme Court in its decision in Mayhan V. Howell. I realize that you are arguing that there should be single member districts throughout the state of Mississippi and there is no purpose here of foreclosing that argument, certainly the Supreme Court said in the North Dakota case if the Federal Courts were to do it they should set up single member districts. But you may proceed from there.

By Mr. Parker:

This state policy providing fair and effective repre-

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[66] By Mr. Parker:

I can announce to the Court that it is plaintiffs understanding that for 1970 and 1974 two bills that were introduced by Representative Robert Clark were passed. One bill made fox lures unlawful and the second bill provided for a sickle cell anemia program.

By Judge Coleman:

A sickle cell anemia program would certainly be helpful to the black people, wouldn't it?

By Mr. Parker:

Yes, sir.

By Judge Coleman:

I would hope that it would be used to the fullest because that's a scourge that needs to be eliminated if it can be and the House did pass that. Now let's go over some of these other bills. He has a bill here to declare that Martin Luther King and Medger Evers birthdays be legal holidays. He's got an act to make failure to vote a crime, he's got a bill to establish uniform training programs concerning election laws for all poll workers to require the Mississippi Election Commission to administer such a program. The next to provide assistance to the illiterate voter by permitting a member of his family to aid him in marking his ballot, which would certainly be good for the white [67] illiterate as well as the black, it might be more helpful to the black. An act to provide for the construction of an identification sign indicating the proper off ramp for Jackson State College on Interstate 55 and Interstate 20. An act to provide for compulsory school attendance in the State of Mississippi, which I think we can take judicial notice as being strongly supported by many white people as well as black and so on. Well, do you think it's necessary to introduce, do you think that this Court or the Supreme Court ought to read all these bills to determine their merit or would this list, this description, be sufficient, Mr. Parker?

By Mr. Parker:

Well if we had to choose between the bills and the descriptions we would——

By Judge Coleman:

Well I know——

By Mr. Parker:

(Continuing) choose the bills, but the descriptions, I think, are helpful.

By Judge Coleman:

I'm not driving you to a choice, I'm just asking you, isn't it really a fact that everything really worthwhile can be taken from this two page list, I just

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Defendants' Objections to Plaintiffs' Motion for Injunctive Relief and to Enforce the Mandate of the Supreme Court of the United States, and to the Motion of the United States for Preliminary Injunction

[TITLE OMITTED IN PRINTING]

[FILED JUNE 19, 1975]

Defendants concur with plaintiffs that this Court should enforce the mandate of the Supreme Court of the United States, but defendants strongly object to the relief requested therewith and submit that the relief requested by plaintiffs and the United States in their respective motions seeking preliminary and permanent injunctions is in direct contravention of the decision and mandate of the Supreme Court of the United States entered in *Connor* v. *Waller,* No. 74-1509 on June 5, 1975. In support hereof, defendants submit the following, to-wit:

1. By petition filed simultaneously herewith, defendants pray for the issuance by this Court of a Writ of Mandamus directed to the Attorney General of the United States requiring him to act in accordance with his officially adopted policy of deferring to the judicial determination of the Fifteenth Amendment challenges to election changes submitted to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. 1973c, thereby requiring the Attorney General to withdraw his objection to House Bill 1290 and Senate Bill 2976, Miss. Laws, 1975 Regular Session, and clear these acts for immediate implementation. *Harper* v. *Levi,* Nos. 73-1766 and 73-2035, United States Court of Appeals for the District of Columbia Circuit.

2. Defendants object to the implementation of either the Valinsky Plan (Exs. P-19, P-20) or the Kirksey Plan (Exs. P-33, P-34) and to the implementation of any state-

wide single-member district plan for the 1975 legislative elections in that the imposing of any such reapportionment plan on the State of Mississippi by this Court would violate and contravene Mississippi's well established policy for the preference of some multi-member districts in both the Mississippi House of Representatives and the Mississippi Senate. Thus, such action by this Court would be contrary to the mandate of the Supreme Court of the United States "to require the conduct of the 1975 elections pursuant to a court-ordered reapportionment plan that complies with this Court's decision in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Johnson,* 404 U.S. 549 (1972) and *Chapman* v. *Meier,* —— U.S. —— (1975)."

3. Defendants further object to the imposition of the statewide single-member district plans suggested by plaintiffs and the United States for the conduct of the 1975 legislative elections on the grounds that to order such a reapportionment plan would cause great harm to the citizens of the State of Mississippi. In any statewide single-member district plan for Mississippi, 122 single-member districts would have to be created for the House and 52 single-member districts would have to be created for the Senate. Mississippi has 82 counties, 410 supervisors' districts and 2,101 precincts. To superimpose 52 Senate districts over 122 House districts on 82 counties would result in splitting counties, supervisors' districts and even precincts. To impose this entirely new apportionment procedure for the 1975 legislative elections where House districts cross Senate districts which cross county lines, where one beat is joined with another beat, where a beat of one county is joined with another county or a beat or beats of another county, and where even precincts of one county might be joined with precincts of another county would without question present insurmountable difficulties for the State of Mississippi, for its election officials, for legislative candidates and, more importantly, for the electorate of the State of Mississippi.

4. For the conduct of the 1975 legislative elections, defendants would show that the mandate of the Supreme Court of the United States requires this Court to readopt its reapportionment plan of 1971, which was never held to be unconstitutional, and to order the creation of small multi-member House districts composed of supervisors' districts for the Counties of Hinds and Harrison, with only two representatives for each of said counties being elected from the respective counties at large, and to order that five representatives elected from Jackson and George Counties reside in each of the respective supervisors' districts of Jackson County, with that district's sixth representative being a resident of George County. Such a court-ordered plan is in compliance with the decisions of the Supreme Court of the United States in *Mahan* v. *Howell,* 410 U.S. 315 (1973), *Connor* v. *Johnson,* 404 U.S. 549 (1972) and *Chapman* v. *Meier,* —— U.S. —— (1975), for in creating small multi-member districts for Hinds County, where the subdistricts elect only two representatives and two are elected at large; and for Harrison County, where the sub-districts elect only one representative and two are elected at large, the *large* multi-member districts frowned upon by the Supreme Court in *Connor,* supra, are avoided. The well established state policy of multi-member districts for the election of the Mississippi Legislature is adhered to as required under *Chapman* v. *Meier,* supra, and *Mahan* v. *Howell,* supra, thus giving deference to the rational state policy of maintaining the integrity of the basic unit of government in the State of Mississippi, i.e., 82 counties under *Mahan* v. *Howell,* supra. This is the mandate of the Supreme Court of the United States.

Wherefore, defendants respectfully submit that for the 1975 legislative elections this Court readopt the 1971 court-ordered plan with the changes for Hinds, Harrison and Jackson Counties as set out in paragraph 4 above.

Respectfully Submitted,

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel

/s/ By: A. F. Summer
A. F. Summer

[Certificate of Service Omitted in Printing]

[From Transcript of June 20, 1975 Hearing]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

CIVIL ACTION NUMBER 3830(A)

PEGGY J. CONNOR, ET AL *Plaintiffs*

v.

WILLIAM L. WALLER, ET AL *Defendants*

APPEARANCES:

HON. FRANK R. PARKER and HON. HERMAN WILSON, 233 North Farish Street, Jackson, Mississippi 39201;

HON. JOHN L. MAXEY, II, P.O. Box 22571, Jackson, Mississippi 39205;

For the Plaintiffs.

HON. GERALD W. JONES and HON. MICHAEL D. JOHNSON, Department of Justice, Civil Rights Division, Washington, D.C. 20530;

For the United States of America.

HON. A. F. SUMMER, HON. WILLIAM ALLAIN and HON. GILES BRYANT, P.O. Box 220k Jackson, Mississippi 39205;

For the Defendants.

BE IT REMEMBERED that on, to-wit: Friday, June 20, 1975, the above styled and numbered cause came on for hearing before the HONORABLE J. P. COLEMAN, United States Circuit Judge, HONORABLE WILLIAM HAROLD COX and HONORABLE DAN M. RUSSELL, JR., United States District Judges, at Jackson, Mississippi, in the Jackson Division, when the following proceedings were had and entered of record:

[2] BY JUDGE COLEMAN:

This time and place is designated for a further hearing on Mississippi's reappportionment problems. Are the plaintiffs ready to proceed?

BY MR. PARKER:

The plaintiffs are ready, Your Honor.

BY JUDGE COLEMAN:

What says the government?

BY MR. JONES:

Ready, Your Honor.

BY JUDGE COLEMAN:

Pardon me, Justice. Mr. Summer?

BY MR. SUMMER:

The defendants are ready, Your Honor.

BY JUDGE COLEMAN:

Now gentlemen we have filed in here a petition for the writ of mandamus by the Attorney General in which he seems to infer that the Department of Justice believes in one law for Rome and another law for Athens. I suppose that we should take that up first thing this morning before we get over into the merits of this matter. Are you ready to proceed on that, Mr. Summer?

BY MR. SUMMER:

Ready to proceed, if the Court please.

BY JUDGE COLEMAN:

[3] You may proceed.

BY MR. SUMMER:

We have asked for this petition for writ of mandamus pursuant to Section 28 USC 1361 to direct the Attorney General of the United States to withdraw his objection to House Bill 1290 and Senate Bill 2976 to hold the elections for the 1975 legislature. We alleged that there is a clear duty owed to the State of Mississippi to approve these bills under the United States Attorney General's deferral policy, his rules, regulations adopted as rules and regulations and is the policy of the Attorney General. On June 9th we submitted according to the order of the U. S. Supreme Court, we submitted both bills to the Attorney General for his approval or disapproval. On June 10th those, he received them on June 9th and on June 10th after a reasoned consideration those bills were objected to and we were refused the right to use those bills as a plan to run the '75 legislative election. Such action of the Attorney General of the United States is in irreconcilable conflict with his officially adopted policy. The Department of Justice has developed rules and regulations and procedures designed to avoid conflicts between administrative review under Section 5 of the Voting Rights Act and Federal Litigations [4] based on the Fourteenth or Fifteenth Amendment attacks upon the reapportionment plan. The Attorney General's policy has been to defer to judicial determination regarding racial discrimination as set out in Georgia v. United States, footnote 6. It is well settled of course that an administrative agency must follow its own established procedures.

BY JUDGE COLEMAN:

Well now let's see, just what happened in the Georgia case?

BY MR. SUMMER:

In the Georgia case the Attorney General objected, the case went to the Court under a plan devised by the legislature which I believe was Plan A.

BY JUDGE COLEMAN:

The Attorney General in the Georgia case as I recall it, the Attorney General of the United States objected and then Georgia just went ahead anyway, just paid it no attention.

BY MR. SUMMER:

That's correct.

BY JUDGE COLEMAN:

Then what, the three judge Court nullified it, did they not, and the Supreme Court of the United States affirmed.

[5] BY MR. SUMMER:

They first had a hearing on Plan A which the three judge panel heard and refused on other grounds but upheld on the Fourteenth and Fifteenth Amendment grounds. They refused it as to the other parts of the plan. Then the legislature passed another plan, they came back to the Court and it was submitted to the Attorney General and he said in view of the fact that the Court had ruled on the Fourteenth and Fifteenth Amendments that under their rules and regulations they were prevented from giving a no answer and they were, in order to keep the harmony between the Administrative Department and the Justice Department and the Court that they would enter no objection. This was a well-established plan, it was recognized first in the Allen case that this may be a problem, it came up in the Allen case, but the Supreme Court refused to take a look at it at that time, they said we have had no experience with it and it may, the fact that it has to go both routes may create problems but we're not ruling on that at this time. Later on in the Georgia case they came back and according to the brief submitted by the Department of Justice they put a footnote in the Georgia case wherein it said that we have had some experience since [6] the Allen case, there has been three hundred and some odd reapportionment decisions. Only 19 of them have been litigated, so

all of the administrative problems which we may have anticipated are not occurring because the United States Attorney General has adopted the rules and regulations where he will defer to those matters in litigation and will adopt the Court's plan. Now that is set out as footnote 6 in Georgia v. United States. So the Supreme Court recognized in that case that they had rules and regulations, they had a policy and it prevented the crash between the administrative agencies and the courts, whereas their own policy they said that when a Court, a District Court, three judge panel, had made the decision involving the Fourteenth and Fifteenth Amendment rights that those were the exact same things that were involved in Section Five, that Section Five was bottomed on the Fifteenth Amendment and when those rights had been determined by a Court that they would defer and that was their policy.

By Judge Coleman:

All right, now there's not any doubt of course, the law books are full of the principle that executive departments and agencies are bound by their own rules and regulations so I don't think it's necessary for [7] you to discuss that——

By Mr. Summer:

(Interposing) All right.

By Judge Coleman:

Where else and on what other occasions has the department, if any, followed any such rules or regulations of its own making?

By Mr. Summer:

Well of course the only case we have found and they said there's 19 in litigation in their own brief, they would know better than I, but they stated in their own brief that there had only been 19 cases in litigation and they had referred to that——

By Judge Russell:

Is that the South Carolina case you're referring to?

By Mr. Summer:

With the South Carolina case, yes, sir. That was known as the Twiggs Case in South Carolina. And of course that went a little bit further. After the Attorney General deferred to the South Carolina Court the plaintiffs there went on up to the District of Columbia Court and they filed an action to say that the Justice Department couldn't do that, and of course this is where the Justice Department comes in broadside [8] like a Mack truck and says oh yes we can, it is our rules and regulations, it is our policy, it is the policy that we have followed, we did it in the South Carolina Case and apparently 19 other cases and since the Section Five covers the same thing as the Fifteenth Amendment rights that a three judge panel court has the right to decide those questions just as much as when a matter is in litigation, just as much as a District Court of Columbia or the United States Attorney General and that case is still in the, as far as I know, I'm not able to determine, the Court of Appeals in Washington, D. C., but we picked up from the Justice Department brief to the Court of Appeals their position on this matter and we say that having taken this position consistently in 19 cases apparently and certainly in the case of North Carolina which is a covered state under the Voting Rights Act and which is almost identical to the case that we have at bar here——

By Judge Russell:

You mean the South Carolina Case.

By Mr. Summer:

Excuse me, South Carolina, yes, sir. That they cannot then turn around when Mississippi's time comes around and say oh no, that's not our policy, we are going to [9] object to yours and not only are we going to object but

we are going to come in and try to impose a different plan from that which the Court has decided, after having acknowledged that the Court had the authority to decide the Fourteenth and Fifteenth Amendment questions and they would not challenge it because it would create insurmountable problems between the Judiciary and the Executive Department. And as stated reading from their own brief, our only function under Section Five of the Voting Rights Act is to review submitted acts for Fifteenth Amendment compliance as nearly as posssible in the same manner that the District Court of Columbia would have had to act then presented there a subject of a declaratory judgment action. Under this standard we feel constrained to defer to the above determination of the three judge District Court. The District Court unquestionably had jurisdiction to consider the issues presented to it under both the Fourteenth and Fifteenth Amendment and it has specifically found Plan A to be unconstitutional, the South Carolina Case. Parties who feel aggrieved by its decision have a full right to seek appellate review. It will in our view not be appropriate to read the Voting Rights Act as requiring or permitting the Attorney General to review a determination [10] made by a United States District Court in the proper exercise of its statutory jurisdiction. For this reason we enter no objection to the implementation of Plan A 1205.

By Judge Coleman:

All right, now South Carolina, was this a legislative enactment?

By Mr. Summer:

This was a legislative enactment.

By Judge Coleman:

Had it been submitted to the Attorney General?

By Mr. Summer:

It had been submitted to the Attorney General.

By Judge Coleman:

He had objected?

By Mr. Summer:

He had objected and they proceeded on with the trial.

By Judge Coleman:

Litigation?

By Mr. Summer:

With the litigation to the end that the Court ruled and the acquiescence or deferrance came after the ruling of the Court.

By Judge Russell:

That was the two plans they had, didn't they have Plan [11] A and Plan B?

By Mr. Summer:

Well, there was a Senate plan and there was a House plan and of course it involved the same thing that we've got here, multimember districts, single shot voting, all of those things that we have involved in this case which they say they objected to in the first place, in the first case, but since in the first case the Fourteenth and Fifteenth Amendment questions were settled then they weren't, that in the second trial since the three judge panel had already decided the Fourteenth and Fifteenth Amendment question they were not even permitted, according to themselves, their own rules and regulations, to enter an objection.

By Judge Coleman:

Well have you ever seen any printed rules and regulations, they promulgated rules and regulations for the enforcement of the Voting Rights Act, didn't they?

By Mr. Summer:

They have promulgated rules, if the Court please, and of course we are taking their own words from their own briefs that they do have rules and regulations that is a deference to a court decision. Now they would be better able to show those rules and regulations but the [12] Attorney General observed in that same brief now, this is known as or was known as the Richardson Case, now it is known as the Harper Case, because the reason it got to the Circuit Court of Appeals up there was when the plaintiffs brought the action in the District Court, a single district judge ordered the Justice Department to give South Carolina a reasoned decision. All right, they came back and gave North Carolina a reasoned decision and said for the reasons we have just gone over and that we do not object. Then the District Court Judge came back and said no, that won't do, we order you to object to the South Carolina plan and this is what it, as I understand it, is why it is in the Circuit Court of Appeals right now. And when the Court ordered them to object was when the Justice Department prepared this brief from which I have been quoting to justify their policy of deferral, and of course we could not have, it was basically the same brief that we presented to the United States Supreme Court on the application for stay in this case but they took another position, they mildly suggested in their brief to the United States Supreme Court in this case that they may not be able to do that, but then they went on of course and requested the same relief that the plaintiffs have requested here and have [13] and have taken an absolute opposite position and we say that under the Cardy rules and so forth that following an agency's rules and regulations that they have no other choice. We submitted it to them as the Court ordered, and the Supreme Court simply said that we could not hold those elections under the 75 plan unless, until and unless it was submitted to the Attorney General and cleared and say approved or,

it seemed to recognize its own statements in the Georgia case wherein it approved the deferral policy, so we are contending of course that since the plan has been submitted, since this Court has made the determination after long and protracted hearings and has reached the questions under the Fourteenth and Fifteenth Amendments that their policy, their rules and regulations and policies in effect, and they have no other choice than to approve it.

By Judge Russell:

You say under policy now of the department, now are there any rules, now we listened to rules all day yesterday, part of yesterday in another three judge case in Biloxi, of a time that they had in which to either act or not act. Now then those rules have been amended from time to time. Are you speaking of rules or are you speaking of policy?

[14] By Mr. Summer:

If the Court please, the only way I can answer that question is I do not have that knowledge other than the fact that they themselves, the Department of Justice, said in their brief and to the Circuit Court of Appeals in Washington that they had developed rules and regulations and implemented a policy of deferral. Now I presume they would not have said that to the Court had they not developed such rules and regulations and had, and if they did not have such a policy of deferral.

By Judge Russell:

Do you have a copy of the rules and regulations?

By Mr. Summer:

No, sir, I do not, no, sir.

By Judge Coleman:

Well it's to be presumed, of course, that they told the truth about it in their representations to the Court, that

doesn't really give us a full picture, we'll probably get that from the government's lawyers when they have a chance to talk.

By Mr. Summer:

I had presumed since they were in the Court they would be more, we have never received a copy of those to my knowledge, that deferral policy, but since it has [15] been referred to in the cases that have been before the Supreme Court since the Supreme Court has commented on it favorably as being the answer to the questions of administrative difficulties raised in the Allen Case then certainly we would have to presume that such was in existence. Then in going on in quoting from their brief, we are not going to dwell on that at any length of time, that the Attorney General's determination to defer to the decision of the District Court is not inconsistent with his responsibilities under the Voting Rights Act, words of the Department of Justice, and I believe that we had cited to this Court, I know we cited to the Supreme Court in our brief the caveat that I mentioned in the Allen case that they would decide later, and this is the United States Court's words in the Georgia Case. The caveat implicit in this language could support the appellant's position only if practical problems of administration had emerged in the period that had elapsed since Allen was decided. This does not appear to have been the case. The brief of the United States advises us that the Department of Justice has adopted procedures designed to minimize any conflict between Section Five administrative review and Federal Court litigation based on Fourteenth and Fifteenth Amendment attacks [16] upon state reapportionment plans where a plan has been submitted to the Attorney General and is at the same time being litigated with respect to a Fifteenth Amendment claim the Attorney General has deferred to the judicial determination regarding racial discrimination. And of course that language

strongly suggests that the Attorney General's policy represents what the United States considers to be a construction of the Act, of the Voting Rights Act as well. So I could go on and on in that regard, basically I have the cases that of course an administrative agency is compelled to follow its own rules, it doesn't have to make those rules but once it makes them it has to follow them as the Court knows. They apparently have made those rules. Having made them and having observed them in regard to other states they cannot at this time discriminate against the State of Mississippi by taking another position and refusing to use their policy of deferral and accordingly we ask that, we say that they, we are entitled to a writ of mandamus for them under their policy of deferral since this Court has decided those issues in this case to immediately or upon a writ of mandamus clear or approve the two acts of the 1975 legislature and we be allowed to proceed with that plan.

[17] By Judge Coleman:

Now Mr. Jones, before you begin I want to be absolutely certain that we understand each other. You are here with the full knowledge and authority of the Attorney General of the United States in this case?

By Mr. Jones:

That is correct, Your Honor.

By Judge Coleman:

And you have as his representative the right to speak for him and on his behalf.

By Mr. Jones:

That is correct.

By Judge Coleman:

And you are parties to this litigation, of course.

BY MR. JONES:

Yes, sir.

BY JUDGE COLEMAN:

All right.

BY MR. JONES:

May it please the Court, we believe that the defendant's petition for mandamus in this case is completely without merit. First of all we are faced with a question of jurisdiction. Section 14B of the Voting Rights Act of 1965 makes it clear that any attack upon the performance or authority of a Federal Official while acting under [18] the auspices of the Voting Rights Act is an issue relegated to the sole jurisdiction of the District Court for the District of Columbia. The Section reads that in particular no court other than the District Courts of the District of Columbia or a Court of Appeals in any proceeding under Section 9 shall have jurisdiction to issue any declaratory judgment pursuant to Section 4 or 5 or any restraining order or temporary or permanent injunction against the execution or enforcement of any position of this Act or any action of any federal officer or employee pursuant hereto. We think that that effectively disposes of the claim for mandamus against the Attorney General in this Court.

BY JUDGE COLEMAN:

What about though that when he is part of the litigation. The Attorney General now is a litigant in this Court and before us. The truth is we don't have to mandamus him.

BY MR. JONES:

The Act speaks specifically in terms of injunctive or any other type relief against an employee pursuant to his functions under the Act and that would seem to include the action of the Attorney General in this case in interposing the objection to the submission [19] from the state last week. However, there are several other grounds upon which the Court here should deny this petition for mandamus. The second one is that under the structure of the Voting Rights Act the State has an adequate remedy specifically provided for in the Act, Section 5 itself, that is whenever the Attorney General interposes an objection that does not preclude the State from pursuing the specific remedy established in the Act itself which is that the change cannot be implemented until a declaratory judgment is obtained from the District Court for the District of Columbia. So therefore he does have, the State does have an adequate remedy at law in the State so to speak. Thirdly, on the fact, on the substance of the petition this case is as a matter of posture quite different from the South Carolina Case, Harper versus Levi, which the defendants rely upon.

BY JUDGE COLEMAN:

That case, is it still pending in the Court of Appeals or——

BY MR. JONES:

(Interposing) It is still pending decision, Your Honor.

BY JUDGE COLEMAN:

What is the name of the case, please?

BY MR. JONES:

[20] Harper versus Levi, L e v i, he is the present Attorney General of the United States.

BY JUDGE COLEMAN:

Oh, I see, the word Levi is in there because he is the Attorney General.

BY MR. JONES:

That's right.

By Judge Coleman:

Harper V. Levi.

By Mr. Jones:

In that case what happened was that a submission was made to the Attorney General of an Act reapportioning the State Legislature in South Carolina. That submission, that Act, included various features including multimember districts, majority vote requirement and numbered seat provisions. Those, under our analysis, those features made the plan objectionable and the Attorney General interposed an objection on that basis. Subsequently thereto the District Court in South Carolina in which that same legislation was pending in a private suit held that same act unconstitutional on Fourteenth Amendment ground.

By Judge Coleman:

May I stop and think with you there just a minute. If the objection of the Attorney General is sufficient [21] to kill a proposal, to render it absolutely inoperative, what further business did the Attorney General, did the District Court in South Carolina have of the matter, the State could not put it into effect.

By Mr. Jones:

That is correct, Your Honor, but the litigation in the District Court was brought on Fourteenth Amendment grounds, Fifteenth Amendment grounds, and there was also a Section 5 count——

By Judge Coleman:

That's what we have in this case, we've got Fourteenth Amendment——

By Mr. Jones:

(Interposing) That's correct.

By Judge Coleman:

(Continuing) One man, one vote and Fifteenth Amendment and Section 5.

By Mr. Jones:

So I would assume that this Court in South Carolina wanted to definitely dispose of the Fourteenth Amendment issue even though the Attorney General had objected and the plan would have been unenforceable after a declaratory judgment of the District of Columbia Court.

By Judge Coleman:

[22] Well now if no election could be held how could there be a Fourteenth Amendment issue?

By Mr. Jones:

The determination of the Attorney General on the voting rights does not go specifically to the Fourteenth Amendment issue.

By Judge Coleman:

I know, but——

By Mr. Jones:

(Interposing) So that issue insofar as was raised in the District Court was still liable and the——

By Judge Coleman:

Anyway the District Court did go on and did say that this was an illegal act, in other words, or unconstitutional?

By Mr. Jones:

It did not satisfy Fourteenth Amendment requirements, that's right.

By Judge Coleman:

What did it say about Fifteenth and the voting rights?

BY MR. JONES:

It ruled on Fifteenth Amendment issues also, it——

BY JUDGE COLEMAN:

Now why did they do that when the Attorney General had already objected to——

[23] BY MR. JONES:

(Interposing) Well that ruling came prior to the Attorney General, as a matter of fact I think it was in a preliminary proceeding in that same litigation, the Court ruled that the plan was not viable of the Fifteenth Amendment right. After the Attorney General objected the plan was found to be viable, violative of Fourteenth Amendment rights. Therefore, thereafter the State went back to the drawing boards and came up with another plan.

BY JUDGE COLEMAN:

Passed by the legislature?

BY MR. JONES:

Passed by the legislature. That plan like the previous plan, and in both instances there were alternatives A and B, they actually passed two plans in each instance and submitted both so that if one didn't pass Section 5 muster the other might, but in the first instance we found that both violated Section 5 because both included these objectionable features. When they went back to the drawing board they came up with another plan which also incorporated those same features and I have to backtrack here one moment. The Court in ruling on Fifteenth Amendment issues, I was correct the first time, did rule on both [24] issues in the disposition of the case after the Attorney General had objected. In other words, the Attorney General, the Court's ruling on Fifteenth Amendment issues came in-between the passage of the second, I'm still getting ahead of myself, the——

BY JUDGE COLEMAN:

Just take your time because I realize——

BY MR. JONES:

(Interposing) That's right——

BY JUDGE COLEMAN:

(Continuing) it's hard to keep them straight but I have not had a chance, see these papers were only filed yesterday and your answer was only filed yesterday, your brief, so I haven't had a chance to read the case. South Carolina is a state that I know a lot about but I don't know anything about their legislature.

BY MR. JONES:

The Court ruled on the Fifteenth Amendment issue after the objection. The plan, the State went back and reenacted another plan which incorporated the same features and submitted that to the Attorney General, at the same time submitting it to the Court in the pending litigaion. The Court, while we were still considering under Section 5, ruled that that plan [25] met constitutional standards referring back to its previous decision which had found the plan acceptable under both the Fourteenth and the Fifteenth Amendments. On the basis of that ruling of the Court which in effect was saying that the plan met Fifteenth Amendment requirements as well as Fourteenth Amendment requirements, the Attorney General wrote to the State saying that in view of that ruling he felt constrained to defer to this District Court which had ruled on the Fifteenth Amendment problem and this is the policy——

BY JUDGE COLEMAN:

He didn't feel constrained to do that though in our case. After we had finished with it he went up to the Supreme Court and filed an amicus brief.

By Mr. Jones:

Well that's the difference in the posture of the cases, Your Honor. Our policy differs insofar as it exists and really it's not so much a policy and practice as a policy and theory because that is the only case of which I'm aware and I've been in the Section 5 business since 1969, in which the Attorney General actually deferred to a District Court ruling. The general procedure, what happens, is that the District Court will withhold its ruling on the merits until such time as the plans have been submitted to the [26] Attorney General and received his evaluation. However, in this case what happened was that no submission was made, the instant case I'm talking about now, no submission was made to the Attorney General.

By Judge Coleman:

Well we had retained jurisdiction in this case specifically stated in boxcar letters back in 1966 and y'all didn't tell the Supreme Court a thing about that in your papers.

By Mr. Jones:

We understand that, Your Honor, and perhaps maybe in some respect we were somewhat remiss on that, it's hard to catch all of, uhh, what we did in this case though was the case, that the policy of deference, base policy, which we have engaged in, has been——

By Judge Russell:

How are your policies spelled out, that's what, I looked at rules all day yesterday in another case in Biloxi and this——

By Mr. Jones:

(Interposing) This policy is not——

By Judge Russell:

(Continuing) Is this just policies or rules or regulations?

By Mr. Jones:

[27] It's just an informal working relationship that we have developed over the years.

By Judge Russell:

Well do they change on each individual case or are they consistent?

By Mr. Jones:

Well as I pointed out before, the only instance in which the question of whether we would defer to a State's ruling came up was in the South Carolina case. It came up again in a somewhat revised fact situation in a submission involving integration in Richmond, Virginia, but there too the fact situation was different and we did not, the end result was not the same that we did not object on the basis of that policy. The policy insofar as that in the policy arose primarily to avoid the conflict that would come where an administrative agency or a member of the Executive Branch I should say, because we are not in fact an administrative agency, would find itself in effect reviewing what a Federal District Court has already decided because Fifteenth Amendment issues are the basis for the actions under Section 5 as well as in litigation in which Fifteenth Amendment issues have been raised. In this particular case, in the Connor case, that conflict never arose because no [28] submission was ever made to the Attorney General. Therefore when the litigation reached the stage of being appealed to the Supreme Court we felt completely free to file a paper in the Supreme Court indicating what the position of the United States would be on that very issue because that issue of deference has not specifically ever been decided by the Supreme Court.

By Judge Coleman:

But y'all didn't stop it, y'all didn't stop it, y'all didn't stop it in the papers you filed in the Supreme Court, you

didn't stop us saying this should have been and must have been submitted to the Attorney General for it to have been valid, you went on then and joined forces with the plaintiffs on some kind of an informal basis of which you had not previously informed our Court, saying that the Supreme Court ought to do this, they ought to enjoin the election, they ought to order this and they ought to order that and ought to order the other, none of which the Supreme Court did. They didn't accept your invitation to do all those things.

BY MR. JONES:

We——

BY JUDGE COLEMAN:

I think that's highly significant in this case that the [29] Supreme Court thought that you were right, that since it originated with the legislature it had to be submitted to the Attorney General, but unless the Supreme Court picked up what the Mississippi Attorney General filed they reached that conclusion in ignorance of the fact that there had been retained jurisdiction in this case all the way through it. We had said in 1966 that we retained jurisdiction to examine the constitutionality of all legislative reapportionment under the 1960 census and under the 1970 census, and what we did in 1971 after the 1970 census was in pursuance of this retained jurisdiction, so although we heard these cases and we've spent about two weeks trying to draft an opinion that would cover all phases of the case then it was taken up to the Supreme Court as if we had just started out on an initial journey, that we were not exercising jurisdiction which had been retained ever since 1966, and I just wonder what the Supreme Court might have thought about it if they had had that in mind, they had known that. Our jurisdiction has been ousted by this maneuver and by this practice or maybe it hasn't been ousted. If the District Courts can

go on and decide Section 5 issues after the Attorney General has refused to approve a plan like the South Carolina Courts did maybe his opinion is only advisory [30] then until the Courts can pass on it and I guess that is what it amounts too because whatever we say now doesn't have to be sent back to you, does it?

BY MR. JONES:

If the Court formulated, that's right, it would fall within the 1971 Connor principle.

BY JUDGE COLEMAN:

That's right.

BY MR. JONES:

And I might add, Your Honor, that that 1971 principle that came out of this litigation, Connor, where the Supreme Court said a decree of the District Court is not within the perview of Section 5, that is, that really, we found it necessary to devise some policy of deference of the nature that we have been describing here this morning although it's informal and it is not publicized, Judge Russell.

BY JUDGE COLEMAN:

Well now suppose it is——

BY MR. JONES:

(Interposing) It's not a formulated rule——

BY JUDGE COLEMAN:

(Continuing) Suppose it is informal, you are seeking to win a case now and before another Court of Appeals on the proposition that that is your policy, aren't [31] you, you say that the case is still pending and you told that Court, and you are certainly bound by what you told the Court, that you do have such a policy.

By Mr. Jones:

That is correct, Your Honor, but I might add that happened several years ago in 1973, I believe.

By Judge Coleman:

Have you moved to dismiss the appeal in the District Court of the District of Columbia because you no longer have such a policy?

By Mr. Jones:

Since the Supreme Court ruled on June 5th in this case setting forth the principles that it did we have under active consideration now the position that we have taken on this policy of deference and well might be that that will happen, I don't know because the Solicitor General's office has to prove whatever actions we take there. That is something that is being actively considered now.

By Judge Coleman:

May I ask you this. I appreciate the fact that the Department of Justice has a right to move to intervene in these cases and you moved to intervene in this one and we very promptly granted your intervention and I think you remember what I said when we had our pretrial conference here last Friday, it was Thursday, that

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[40] [By Judge Coleman] lines. All of us who know much geography, know that all the south side of Virginia south of the James is a predominately generally black area.

By Mr. Jones:

That's right, Your Honor.

By Judge Coleman:

And of course that part over in the valley and down southwest of Virginia around Bristol and that area is predominately white. And I suppose that is up, right up against Washington, although I don't know. I once lived in Washington for four years but it's been a long time.

By Mr. Jones:

That's heavily white.

By Judge Coleman:

Now if Virginia could preserve the integrity of its county lines which has certainly been the undoubted history of the State of Mississippi, I challenge anybody by anything except the purest sophistry to suggest that Mississippi has ever operated on anything except the preservation of its county integrity, county boundaries, from the Constitution of 1832 right on down to date including the reconstruction convention of 1868. Now why wouldn't it be possible if Virginia could do it for it to be done in the [41] State of Mississippi to reapportion the legislature in such a way as to avoid the dilution of the black vote without at the same time destroying the only basis upon which state government rests in this state, to-wit: the counties.

By Mr. Jones:

Well we believe, Your Honor, that to some extent, and I emphasize that phrase, to some extent the State can do that and the possible alternative that we have suggested demonstrates that. Some of the boundary lines fall, the county boundary lines fall under our proposals and we think that that is necessary. In Virginia we looked at the plan, it was submitted to us and we looked at it and evaluated it and we did not find that the principle observing county lines fragmented black concentrations were grouped in such a way that they submerged substantial black concentrations into larger white pools of votes and those type features which we did find to exist in the Mississippi plan. We think that the constitutional pro-

vision, the Fifteenth Amendment, which really involves fundamental constitutional rights demands that the "rational state policy" which the Courts have talked about in terms of Fourteenth Amendment considerations cannot, well the Fifteenth Amendment requires that that

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[80] [By Judge Coleman] ble dilution of the black voting strength. We can get the population figures by beats under the way that they conducted the census in 1970, but the only thing the beats now have been changed. Maybe we could get to the court orders that were entered in each case, a lot of it was probably done by agreement, a lot of it maybe you expressed no objection to, they have to refer those things to the Department of Justice. There might be some way you could ferret out the population of various beats. You mentioned in your plan, I just got a quick look at one page of it this morning after you sent it around, and you are still mentioning census enumeration districts, census enumeration tracts, and I think in the present contacts of affairs in Mississippi with permanent voter registration and with the precinct lines being what they are it's just totally unrealistic to think we could use them in the 1975 election or maybe ever when you get right down to it. So what Mr. Parker proposed is that we stop all elections until these insuperable difficulties are surmounted which would have the effect of freezing in office everybody who is now in office as a Senator or Representative unless they quit or unless they're running for some other job as many of them are.

[81] By Mr. Jones:

We have, Your Honor, looked at a good number of these reapportionment plans both from the state level and from the county and subdistrict level and traditionally, routinely, census enumeration districts have been used as the building blocks for reapportionment districts primarily

because of that figure being the most recent official and reliable statistic on which to rely. As Your Honor mentioned, the supervisors' districts wouldn't be appropriate because the census enumeration, I mean the census counts for those in so many instances would not be for the currently existing supervisors' beats. The problem of using or the matter of using enumeration districts as a building block is a complicated one, no doubt about it, but so is the process of reapportionment itself, and we have found that it has not been an insurmountable task to in many instances to, well first of all precinct lines have to be redrawn to conform to new district boundary lines to meet one person one vote requirements. We have——

By Judge Russell:

To meet what?

By Mr. Jones:

To meet the one person one vote requirements. We have

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[169] [By Judge Coleman] Senator itself, but Quitman, Tate and Tunica right there next to it has one.

By Mr. Parker:

If I could, simplifying this a little bit let me simply say that the Department of Justice calculated the percent black voting age population for each of the districts under the Valinsky Plan and this would be one measure of determining whether the present plan has the effect of dilution, and I simply see, the Valinsky Plan as the Court will recall, the districts were drawn, the lines and the boundaries were selected more or less randomly. In other words this was a color blind plan drawn without any particular intent of maximizing or diluting black voting strength. In District 8 which is all of Coahoma, supervisor District 4 of Tunica and E D's 1 and 8 of Bolivar County has a 59.17 percent black voting age population.

BY JUDGE COLEMAN:

Elect one, two senators?

BY MR. PARKER:

Elect a single Senator, all of these in the Valinsky Plan in single member districts.

BY JUDGE COLEMAN:

Well, the trouble about his plan is as I recall it, he fractures about 63 county lines out of 82 and [170] while that may come to pass out of stern necessity in some instances it certainly is contrary to the public policy of the State of Mississippi and it certainly shouldn't be done unless it's absolutely unavoidably required to avoid unconstitutional dilution of the black voting power, so that's just the thing about all that. It would just cut the State of Mississippi which has no base whatever for its government except the counties up into all kinds of little Balkan hedgemonies that I don't think we're constitutionally required to do and which we're not going to do except where we think we're required to, the Supreme Court may tell us later on we have to, if so we'll do what they say. But what I'm trying to do is to see what we can do about eliminating all of this by disturbing as few county lines as we can instead of just saying okay, there's some problems in some parts of the State, therefore we'll just chop the whole thing to smithereens.

BY MR. PARKER:

I think, Your Honor, that the Justice Department Plan which is called the modified State plan is an effort to do that and perhaps Mr. Jones or Mr. Johnson can tell you more about that, because their plan leaves the 1975 legislative plan intact in those areas.

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[172] [By Judge Coleman] I know but I want to get to the racial discriminatory part of it first.

BY MR. PARKER:

Okay.

BY JUDGE COLEMAN:

Because that's the, that is the somewhat, well in the issue this litigation is new, it wasn't mentioned, it didn't come up when we set up the 1967 plan and it didn't come up when we set up the 1971 plan for the simple reason that we didn't look at the black population of any county or the white population either, we just went to one man one vote and that was it and nobody claimed that there had been any racial minimization or cancelation. Now then of course it's injected into this litigation at this time and I think we've got to cross that bridge before we get to one man one vote. Type 3 fragmentation, are there any places you wanted to mention?

BY MR. PARKER:

Yes, Your Honor. It has been our contention that the supervisors districts of Hinds County is drawn by the 1973 Board plan typified what we refer to as type 3 dilution in the sense that the area of heaviest black concentration within Hinds County which is in the city of Jackson is fragmented and dispersed by the

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[191] [By Judge Coleman] All right, thank you. Mr. Parker.

BY MR. PARKER:

We agree with that formulation. I don't think for purposes of measuring dillution we can compare what the Legislature did in '75 with what the Legislature did in '71 or any other prior Court Order plan because in the history of Mississippi in this century, only one black legislator has ever been elected to the Mississippi Legislature

so we can't point, at least within this century, to some golden era in the past in which there was perfect equality in terms of legislative representative and somehow that was taken away. This standard for measuring dilution was shown very well by Mr. Jones comparing what has been done to what might be. The basis or the starting point for measuring dilution or cancellation is always looking at the districts in terms of the population, voting age population, that type of measurement. In other words, the voting strength in the standard by which that dilution and cancellation is to be made.

BY JUDGE COLEMAN:

All right, Mr. Summer.

BY MR. SUMMER:

Well, sir, as I understand the answer from Mr. Jones and from Mr. Parker using a standard as to what has

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[200] [By Judge Coleman] We won't get rid of the case on that. We'll continue to hold on to it and give it the attention it ought to have from A to Z.

BY MR. SUMMER:

But in so much as to my recommendation as to the starting point to be the decisions that this Court has already made and the conclusions that they have found, and the burden would be on the Plaintiff, of course, to see that that was erroneous.

BY JUDGE COLEMAN:

You Gentlemen have told us quite plainly where you think the dilution has occurred. When can y'all proceed to an evidentiary hearing to establish that it has. How soon can you do that?

BY MR. PARKER:

Your Honor, speaking for the Plaintiffs, we do not request a further evidentiary hearing, but we would rely on the record already made in this case at the hearing on May 7. We rest on that.

BY JUDGE COLEMAN:

All right, you are free to do that if you like. Let the record show he had an opportunity to produce any more if he wanted to. Let's hear from the Department of Justice.

BY MR. JOHNSON:

[201] Well, as Your Honor knows, we haven't been in this litigation very long, and I'm sure that there's much, much in the record of which we are not aware. It might well be that we can reach the same determination after we've had an opportunity to fully evaluate the records, so if we could have, I guess maybe a week's time, to do that we could give a more meaningful and definitive answer.

BY JUDGE COLEMAN:

All right. The Attorney General wants to stand on the record as it is, Mr. Parker wants to stand on the record as it is, and if you would like to take a little bit to give serious consideration as to whether you want to stand on it as is. If everybody is willing to stand on the record as is, we will decide it on the record as is.

BY MR. JOHNSON:

Well, we'll stand on the record as it is. I wasn't aware of the Attorney General's position being that explicit, but if that is his position, then certainly we wouldn't want to be the ones to delay at this late date a determination by this Court.

BY JUDGE COLEMAN:

Well, we asked the Attorney General of Mississippi to distinguish him from his Attorney General counterpart ——

[202] BY MR. SUMMER:

(Interposing) Let me make it clear to the Court that we are perfectly willing to stand on the record as it it.

BY JUDGE COLEMAN:

As it is.

BY MR. JOHNSON:

And we are, too, Your Honor.

BY JUDGE COLEMAN:

Okay. Let the records show that is has been stipulated by all the parties to this litigation that they are willing to stand on the record as it exists on the question of whether or not there has been an unconstitional minimization or cancellation of black voting strength as to the House of Representatives in the counties which have been named to the Court by Counsel without the necessity of repeating them here. All right, is there anything further from either side in this case at this time.

BY MR. SUMMER:

Excuse me, if the Court please, may I confer just a minute.

BY JUDGE COLEMAN:

Did I omit Senate? I meant House of Representatives and Senate.

Defendants' Objections to the June 25, 1975, Court-Ordered Legislative Districts

[TITLE OMITTED IN PRINTING]

[FILED JULY 7, 1975]

Pursuant to the June 25, 1975, order of this Court, defendants state the following objections, to-wit:

I.

Defendants have no objection to the temporary legislative districts for Harrison County, Mississippi.

II.

Defendants have no objection to the temporary legislative district for Jackson County except as it results in the removal of George County from said district.

III.

Defendants object to the temporary legislative district composed of George County, Beat 4 of Greene County and Beat 5 of Stone County.

IV.

Defendants object to the formation of temporary single-member districts for Hinds County.

In support hereof, defendants would state as follows, to-wit:

1. The fracturing of the county lines of Greene and Stone Counties is unnecessary in that by allowing George and Jackson Counties to elect a Representative designated Post No. 6 and requiring that said Representative be a resident of George County, while Jackson County elects

five Representatives by its respective supervisors' districts, District 46 would substantially comply with the one-person, one-vote rule announced in *Reynolds* v. *Sims;* and while the Representative elected to Post No. 6 would represent the entire two-county district, George County would have effective representation in that the representative would be a resident of that county. As a temporary measure, this would be far preferable to the creation of the new district which breaks county lines.

2. The creation of District 47 for the election of one Representative whereby the county lines of Greene and Stone Counties are fractured, drastically dilutes the voting strength of said counties in the following manner:

(a) *Greene County*—By placing Beat 4 of Greene County [population 1,709] with George County [population 12,459] together with Beat 5 of Stone County [population 1,620] results in a drastic dilution of the influence of the residents of Beat 4 of Greene County on the outcome of any legislative election in District 47. Further, by removing Beat 4 from Greene County to create the new legislative district, Beats 1, 2, 3 and 5 of Greene County with a population of only 6,836 are now paired with Perry County with a population of 9,065 for the election of one Representative, where heretofore Greene County's population was only 530 less than that of Perry County. The above arrangement has resulted in a drastic dilution of the voting strength of the people of Greene County and serves to effectively deny said individuals of effective representation.

Attached hereto as Appendix "A" is a copy of a Resolution of the Board of Supervisors of Greene County objecting to the fragmentation of said county and requesting that the Court review its decision thereon and alter such decision to more adequately provide for Greene County.

(b) *Stone County*—By placing Beat 5 of Stone County [population 1,620] with George County [population 12,459]

together with Beat 4 of Greene County [population 1,709] results in a drastic dilution of the influence of the residents of Beat 5 of Stone County on the outcome of any legislative election in District 47. Further, by removing Beat 5 from Stone County to create the new legislative district, Beats 1, 2, 3 and 4 of Stone County, with a population of only 6,480, are now paired with Pearl River County, with a population of 27,802, for the election of two Representatives where heretofore Stone County had 1,620 more individuals in District 43. The above arrangement has resulted in a drastic dilution of the voting strength of the people of Stone County and serves to effectively deny said individuals of effective representation.

Attached hereto as Appendix "B" is a copy of a Resolution of the Board of Supervisors of Stone County objecting to the fragmentation of said county and requesting that the Court review its decision thereon and alter such decision to more adequately provide for Stone County.

3. Defendants hereby readopt and reaffirm their position regarding the formation of single-member districts for Hinds County, and again state unto the Court that as a temporary measure the Court should require small multi-member districts for the election of the twelve Representatives from Hinds County, with each supervisors' district electing two Representatives and with two Representatives being elected from the county at large; and further, that the five Senators should likewise be required to be elected from the county at large. As a temporary measure, this procedure greatly outweighs the creation of single-member districts for Hinds County, especially in view of the impending elections.

WHEREFORE, defendants request this Court to review its decision in regard to the fragmentation of the Counties of Stone and Greene, and further, that the Court review its decision as to the creation of single-member districts

for Hinds County, and that this Court alter its decision with respect thereto as hereinabove set forth.

Respectfully submitted,

A. F. Summer
Attorney General
State of Mississippi

Giles W. Bryant
Special Assistant Attorney General

William A. Allain
Special Counsel

/s/ By: A. F. Summer
A. F. Summer

[Certificate of Service Omitted in Printing]

Response to Motion to Alter or Amend Judgment

[Title Omitted in Printing]

[Filed July 23, 1975]

This is another chapter in the continuing saga of reapportionment in Mississippi. Although Plaintiffs entitled their Motion as one to "Alter or Amend Judgment," it is nothing more than an attempt to orchestrate an old refrain. Plaintiffs, using as their trojan horse this Motion To Alter Or Amend Judgment, have renewed their constitutional attack upon the temporary apportionment plan devised by this Court. As in the past, the primary weapon in the Plaintiffs' arsenal is "dilution of the black vote." Plaintiffs' previous attack was repelled because Plaintiffs' charge of unconstitutional dilution of the black vote was not substantiated by the proof presented.

Plaintiffs continue to assert that the joining together of a "black county" with a "white county" is in and of itself sufficient proof of unconstitutional dilution of the black vote. This proposition is wide of the mark. No Court to this date has even placed its imprimatur upon such legal reasoning.

As recently as July 7, 1975, the United States Court of Appeals for this Circuit in *Wallace* v. *House*, No. 74-2654, analyzed the many cases wherein the question of dilution of the black vote was at issue and distilled therefrom that "the existence of a black population majority [is] not dispositive of the dilution issue, for it is not population but access to the political process that determines whether an interest group enjoys the full vigor of its political rights." P. 6298. The Court noted that the Supreme Court in *Whitcomb* v. *Chavis*, 403 U.S. 124 and *White* v. *Regester*, 412 U.S. 755 admonished that a Court must look beyond mere population figures and that any decision in regard to uncon-

stitutional dilution of black voter strength must be determined from "the totality of circumstances." The Circuit Court placed beyond cavil "that no racial or political group has a constitutional right to be represented in the legislature in proportion to its numbers, so it follows that no such group is constitutionally entitled to an apportionment structure designed to maximize its political advantages." (Cited cases omitted) Neither does any voter or group of voters have a constitutional right to be included within an electoral district that is especially favorable to the interests of one's own group, or to be excluded from a district that is dominated by some other group." P. 6297.

The death knell to Plaintiffs' position commenced when Judge Goldberg, writing for the Court, stated:

> "The critical question under *Chavis* and *Regester* is not whether the challenged political system has a demonstrably adverse effect on the political fortunes of a particular group, but whether the effect is invidiously discriminatory, that is, fundamentally unfair."

Continuing, the author of the opinion wrote that:

> "This Court has decided several dilution cases in recent years, and . . . we have consistently adhered to the proposition that 'access to the political process and not population (is) the barometer of dilution of minority voting strength.' " P. 6297.

Defendants concede that whenever you join together a "black county" and a "white county" the voting strength of the minority race, be it white or be it black, will be "diluted" but such dilution in and of itself does not breach the constitutional fortress surrounding such combination. To successfully storm such fortress, Plaintiffs have the burden of bringing forward much heavier artillery.

This Circuit in *Wallace* relied heavily upon the language of the *Chavis* Court to the effect that to prove constitution-

ally impermissible dilution of black voting strength the charging party must show that blacks

> "had less opportunity than did other [citizens] to participate in the political processes and to elect legislators of their choice. We have discovered nothing in the record . . . indicating that [blacks] were not allowed to register to vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence . . . show . . . that [blacks] were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats." 403 U.S. at 149-50, 91 S.Ct. at 1872, 29 L.Ed.2d at 379-80.

The position of the Plaintiffs is at total war with all previous decisions of the Federal Courts. It appears to be Plaintiffs' position that principles of constitutional law come from repetition rather than sound reasoning and determinations. The Supreme Court of the United States and the Circuit Court of Appeals for this Circuit have made clear to all those who want to see that mere population is not the polestar which guides a court in its determination in regard to unconstitutional dilution of the voting strength of a minority group.

Of some moment and of great interest is the case of *Van Cleave* v. *The Town of Gibsland, Louisiana,* 380 F. Supp. 135, cited with approval in *Wallace,* supra. This action was commenced by a white voter of Gibsland in behalf of all other white voters of that town, asserting that the voting strength of such white voters was diluted because the town aldermen were elected at-large. The Plaintiff made the same argument in that action that is now being made by the Plaintiffs in the action sub judice. The District Court found for the Defendants after determining that the Plain-

tiff had not carried his burden of proving that he was denied access to the political processes. The Court noted that "the plaintiff testified that he was not denied access to the process of slating candidates. "P. 138. This finding strikes a familiar cord in the present litigation wherein the witnesses presented by the Plaintiffs all testified that they knew of no one who had been "denied access to the political processes in the State of Mississippi" except for one or two isolated instances. In fact, the Plaintiff Kirksey testified that he had always freely participated in the political processes and is presently running for Governor of the State of Mississippi. The Town of Gibsland Court took note of the fact that many white voters did not turn out to vote in the elections and commented that "perhaps the plaintiff seeks to slay the wrong dragon." P. 138.

The temporary apportionment plan ordered by this Court for the 1975 legislative elections has been battle tested and Plaintiffs failed to establish even a beachhead when judged by the standards enunciated in *Chavis,* supra, *Regester,* supra, *Wallace,* supra and *Dallas County* v. *Reese,* —— U.S. ——, 44 L.Ed.2d 312. To the contrary, this Court applying the dictates of the United States Supreme Court made a finding and determination that black voters in Mississippi were not denied participation in the election process and therefore the black voting strength was not minimized or cancelled out. To this end, the Court found the Plaintiffs and Plaintiff-Intervenor had failed to prove that the 1975 legislative plan or the Court ordered temporary plan diluted the black voting strength unconstitutionally. For this reason we object to Plaintiffs' request that this Court establish a specific date for special legislative elections to be held prior to the next scheduled 1979 legislative elections or more specifically in 1976.

Plaintiffs, by this motion, also attempt to relitigate their malapportionment claim. The statistics presented with the

motion add nothing new to this action and were before the Court when the Court devised its temporary plan for the 1975 legislative elections. With these figures before it the Court determined that the variances were within constitutional tolerance.

This Court has already established by its Order of July 11, 1975, a schedule by which all parties must submit reapportionment plans to this Court. Defendants suggest that there is no need for this Court at this time to establish a specific date upon which it will render a decision in regard to a permanent reapportionment plan for the Mississippi Legislature.

Further, these Defendants would suggest to the Court that the date for the submission of the Defendants' plans for reapportionment of the Legislature should be changed so that such plans would not have to be submitted any earlier than April 1, 1976. This request of the Defendants is based upon the fact that these Defendants are without authority under the Laws of the State of Mississippi to formulate a legislative reapportionment plan sole authority for such formulation being reposed by the Mississippi Constitution in the Legislature itself. The requested change of submission date would allow time for the 1976 Legislature with the advice of the Attorney General to formulate the plans required by the Court Order.

In regard to the request that the Court delete that portion of the Court's Order appointing Mr. Hoyt T. Holland, Jr., as a special master of the Court in this case, Defendants submit to the Court that the Court is the best judge of the person it will select to serve as its special master and further submit that the reasons stated by the Plaintiffs for such deletion are not proper and valid.

Defendants submit that Plaintiffs are not entitled to taxable cost, expenses of litigation nor any attorney fees.

Respectfuly submitted,

A. F. SUMMER,
ATTORNEY GENERAL

GILES W. BRYANT,
SPECIAL ASSISTANT ATTORNEY GENERAL

WILLIAM A. ALLAIN,
SPECIAL COUNSEL

/s/ By: A. F. Summer
A. F. SUMMER

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Submission Pursuant to Order

[TITLE OMITTED IN PRINTING]

[FILED OCTOBER 9, 1975]

Three times the Supreme Court of the United States has viewed the legislative districts of the Mississippi Legislature as they substantially exist at the present time. Three times the Supreme Court has refused to declare that these legislative districts were unconstitutional. In 1971 this Court fashioned a reapportionment plan for the Mississippi Legislature without regard to race. The Supreme Court of the United States, in looking at the 1971 court-ordered plan, acknowledged this Court's reluctance in creating "large" multi-member districts in Hinds, Harrison and Jackson Counties.

Although plaintiffs sought a decision by the Supreme Court that the legislative districts of this 1971 plan were unconstitutional, the Supreme Court refused to so hold.

After analyzing the decisions of the Supreme Court of the United States setting forth guidelines on legislative reapportionment, the Mississippi Legislature in 1973 enacted a reapportionment plan which substantially conformed to the plan fashioned by this Court in 1971.

Again in 1975 the Legislature acted. It reduced the "large" multi--member districts in Hinds and Harrison Counties, where twelve representatives in Hinds and seven representatives in Harrison were elected by the respective counties at large. The 1975 legislative enactments reduced these "large" multi-member districts—which had concerned this Court as well as the Supreme Court of the United States—by providing that the twelve representatives from Hinds County be elected by supervisors districts, with each supervisor district electing two repre-

sentatives. The Legislature further provided that the remaining two representatives from Hinds County were to be elected from the county at large. Likewise, the Legislature provided that the seven representatives from Harrison County were to be elected by supervisors districts, with each supervisor district electing a representative. The two remaining representatives from Harrison County were to be elected at large. Other minor modifications were made to eliminate "large" multi-member districts.

This action taken by the Mississippi Legislature was a deliberate effort to bring its reapportionment plan within the guidelines announced by this Court and the Supreme Court of the United States. Thus, the Legislature sought to eliminate all "large" multi-member districts and at the same time maintain the integrity of the counties.

On May 19, 1975, following extensive hearings, this Court, as expressed in a 68-page opinion, clearly analyzed the prevailing law, scrutinized each legislative district, and, in finding that blacks in the State of Mississippi have full access to all phases of the election processes, concluded that the legislative districts were constitutionally apportioned.

Again the Supreme Court had another opportunity to view these legislative districts with the modifications in Hinds, Harrison and Jackson Counties. Again the Supreme Court refused to declare that these districts were unconstitutionally apportioned. The plaintiffs asked that the Supreme Court itself order the immediate implementation of a statewide single-member district reapportionment plan. The Supreme Court denied plaintiffs' requested relief.

The Supreme Court in no way intimated that this plan was unconstitutional. Throughout the entire history of this litigation, no court has ever found the legislative districts as they substantially exist at the present to be unconstitutional.

Plaintiffs have asserted throughout this litigation that the joining together of a "black county" with a "white county" is in and of itself sufficient proof of unconstitutional dilution of the black vote. This proposition is wide of the mark. No court to this date has ever placed its imprimatur upon such legal reasoning.

As recently as July 7, 1975, the United States Court of Appeals for this Circuit in *Wallace* v. *House,* No. 74-2654, analyzed the many cases wherein the question of dilution of the black vote was at issue and distilled therefrom that

> **"the existence of a black population majority [is] not dispositive of the dilution issue, for it is not population but access to the political process that determines whether an interest group enjoys the full vigor of its political rights." p. 6298**

The Court noted that the Supreme Court in *Whitcomb* v. *Chavis,* 403 U.S. 124, and *White* v. *Regester,* 412 U.S. 755, admonished that a court must look beyond mere population figures and that any decision in regard to unconstitutional dilution of black voter strength must be determined from "the totality of circumstances." The Circuit Court placed beyond cavil that

> **"no racial or political group has a constitutional right to be represented in the legislature in proportion to its numbers, so it follows that no such group is constitutionally entitled to an apportionment structure designed to maximize its political advantages. [Cited cases omitted] Neither does any voter or group of voters have a constitutional right to be included within an electoral district that is especially favorable to the interests of one's own group, or to be excluded from a district that is dominated by some other group." p. 6297**

The death knell to plaintiffs' position commenced when Judge Goldberg, writing for the Court, stated:

> "The critical question under *Chavis* and *Regester* is not whether the challenged political system has a demonstrably adverse effect on the political fortunes of a particular group, but whether the effect is invidiously discriminatory, that is, fundamentally unfair."

Continuing, the author of the opinion wrote that:

> "This Court has decided several dilution cases in recent years, and . . . we have consistently adhered to the proposition that 'access to the political process and not population (is) the barometer of dilution of minority voting strength.' " p. 6297

Defendants concede that whenever you join together a "black county" and a "white county," the voting strength of the minority race, be it white or be it black, will be "diluted", but such dilution in and of itself does not breach the constitutional fortress surrounding such combination. To successfully storm such fortress, plaintiffs have the burden of bringing forward much heavier artillery.

This Circuit in *Wallace* relied heavily upon the language of the *Chavis* Court to the effect that to prove constitutionally impermissible dilution of black voting strength, the charging party must show that blacks

> "had less opportunity than did other [citizens] to participate in the political processes and to elect legislators of their choice. We have discovered nothing in the record . . . indicating that [blacks] were not allowed to register to vote, to choose the political party they desired to support, to participate in its affairs or to be equally represented on those occasions when legislative candidates were chosen. Nor did the evidence . . . show

> . . . that [blacks] were regularly excluded from the slates of both major parties, thus denying them the chance of occupying legislative seats." 403 U.S. at 149-50, 91 S.Ct. at 1872, 29 L.Ed.2d at 379-80.

The position of the plaintiffs is at total war with all previous decisions of the federal courts. It appears to be plaintiffs' position that principles of constitutional law come from repetition rather than sound reasoning and determinations. The Supreme Court of the United States and the Circuit Court of Appeals for this Circuit have made clear to all those who want to see that mere population is not the polestar which guides a court in its determination in regard to unconstitutional dilution of the voting strength of a minority group.

The plan fashioned by this Court in 1971 as modified by the Legislature in 1975 does not have the purpose or effect of diluting black voting strength. Further, the variances brought about by this plan have heretofore been found to be within constitutional tolerance.

The people of the State of Mississippi, both black and white, are entitled to know in which legislative district they reside and that such district will not change every four years or even every year. To this end, this controversy should end.

In view of the foregoing, defendants hereby submit as their proposed reapportionment plan to be considered by the Court in the formulation of a "permanent" court-ordered plan, the reapportionment plan as fashioned by this Court in 1971, as modified by the Legislature in 1975, which plan maintains the integrity of the counties of the State of Mississippi. Said plan is part of the record in this cause and is incorporated herein by reference. As an alternative plan, defendants hereby submit and incorporate by reference the reapportionment plan as created by this

Court's order of July 11, 1975, which fractures only a minimum of county lines.

Respectfully submitted,

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STATE OF MISSISSIPPI

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/s/ By: A. F. Summer
A. F. SUMMER

[From Transcript of June 15, 1976 Proceedings]

[10] [By Judge Coleman] bound to be adopted, but there has been a motion in this case to disqualify the special master, which has been denied, which has been overruled. Whatever comes out of this Court will go to the Supreme Court of the United States, if anybody wishes to take it there, as the act of this Court, not as something somebody cooked up off in the corner.

We think it is in order for us to point out that we recognize the following policies which have to be taken into consideration in the formulation of the permanent plan of legislative reapportionment.

One. Mississippi has always had a system of permanent registration of voters. Once a voter is registered as a resident of any voting precinct he remains registered there until he moves away or dies. Obviously, the smallest governmental unit in the Mississippi electoral scheme is the voting precinct. Unless this is kept in mind elections could not be effectively conducted. The bureau of the census does not take the census by precincts as it did in former years. Therefore, we do not have specific population figures for voting precincts. This poses a problem in connection with figuring actual population figures in any one precinct. We think, however, that there are reasonably dependable ways by which this problem can be overcome without doing violence to the one man—one vote rule, and when that permanent plan emerges, that plan will, of course, appear.

[11] Second. It has been developed in prior opinions of this Court, from its admission into the Union until the present time Mississippi has had a well-defined policy, articulated in its constitutions, of not fracturing county lines in the formulation of legislative districts. The basis of this policy is that the county is the fundamental unit of state government. All state law in Mississippi—criminal, civil, and administrative—has uniformly rested on that

foundation. We think this policy has to yield to the requirements of the Constitution of the United States, but only in those instances wherein it would cause a conflict with the Constitution. Therefore, the permanent legislative reapportionment plan will fracture county lines only in those instances where there is no other way to avoid a violation of the federal Constitution. If there is no other way to avoid a violation of the federal Constitution the lines will be fractured, but if there are reasonable ways by which it can be avoided, then we are not going to set out—we don't think the Supreme Court has given us a warrant to set out about violating the policy, the well-defined constitutional and legislative policy of the state.

Now in like manner Mississippi has always adhered to the policy of using multi-member districts for the selection of legislators. This policy in and of itself does not violate the federal Constitution, except possibly in [12] large multi-member districts.

Now it is also true that in several instances Mississippi has had the policy of subdividing counties for the election of legislators, such as in Bolivar, Carroll, Chickasaw, and Hinds that come to mind immediately without researching them all. Consequently, subdivisions within a county in the permanent legislative plan would not offend state policy and may be freely utilized where otherwise appropriate.

We conclude with the following: The language of the decision of May 19, 1976 (slip opinion at 3) indicates that any court ordered reapportionment should comply with the Supreme Court decisions in *Mahan* v. *Howell, Conner* v. *Williams,* and *Chapman* v. *Meier.*

It seems to us that *Mahan* v. *Howell* stands for the proposition that in legislative reapportionment a state does not violate the equal protection clause when it pursues a rational objective of preserving the integrity of its political subdivision lines.

Conner v. *Williams* says that "Single-member districts are preferable to large multi-member districts as a general matter."

Chapman v. *Meier* asserted that the enforcement of court ordered reapportionment plans is based on the state's constitution, state statutes, state election laws; that a

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[15] [By Judge Coleman] the beginning of statehood, by constitution and statute, Mississippi has always provided that every county should be entitled to at least one member to the House of Representatives. Since the county is the basic unit of government, the reason for this policy is plain. Of course senators have not been restricted to one county. There is no policy impediment to putting the senate strictly on the basis of population norms. Because of our adherence to population norms, however, this Court has deprived a number of counties of the one representative heretofore guaranteed them by the Mississippi Constitution. The results of this has been that many predominately Black counties, like Noxubee, Kemper, Claiborne, and Jefferson, which join predominately White counties, have been compelled to share the election of representatives with those predominately White counties. In other words, the application of one man—one vote has denied these counties the right of one representative guaranteed to them by the Mississippi Constitution of 1890 and brought forward in the reapportionment amendment of 1962.

Unfortunately, however, this is unavoidable, I may say to my regret, but the population norm for a member of the state House of Representatives is 18,171. Seven counties have less than half that amount. Issaquena County has only 2,737 people. Thus to allocate at least one representative to each county would be "a total subversion of [16] the equal population principle in that legislative body," quoting from *Reynolds* v. *Sims,* 377 U.S. 533.

This does not mean, however, that we should ignore the general right of a county to one representative if it has enough people to avoid subverting the equal population principle. I think clearly that's what *Reynolds* v. *Sims* teaches. It went on to announce all of the many reasons why people should not be deprived of a representative if the state constitution allowed them one, but said, of course, it just couldn't be carried to the extent of allowing it to totally subvert the one man-one vote principle. Obviously if we were to allocate one representative to Issaquena with 2,730 people when 18,000 are required on the state-wide norm, if we were to do it in Claiborne, Jefferson, and Noxubee and Kemper, which would give us a quick, easy solution to our problems, we would at once meet the argument we had just subverted the one man-one vote principle, and there we'd be again.

We also note that since this Court met last the Supreme Court has decided the *East Carroll Parish School Board* v. *Marshall. East Carroll,* footnote 6, held that Section 5 of the voting rights act does not control court ordered legislative reapportionment plans. Therefore, in this case we look to constitutional principles only. We are not to be concerned with the voting rights act, as I

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[23] [By Mr. Parker] be able to expedite that.

JUDGE COLEMAN:

We will give you that right to confer, but do you have any objection to raise to our abandoning use of the 1973 population figures when it's realized there's going to have to be subdividing of counties?

MR. PARKER:

No, Your Honor. That does conform to our position, and that's what we were going to urge upon the Court.

JUDGE COLEMAN:

Very well. I don't think you need to confer about it. If you think you need to you can, but as we have said, we are abandoning that idea. We thought it might be a good one. We saw these figures for the various counties. We realize the terrible turnover that took place between '60 and '70, and after '70 again, and we thought we might minimize it some by using the later figures, but the trouble is we don't have enough and don't have adequate figures, so we have to go back to 1970.

The Court will stand in recess for five minutes.

(Recess)

JUDGE COLEMAN:

Be seated. Mr. Parker?

MR. PARKER:

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[36]

JUDGE COLEMAN:

Let me ask you this: I've been living with this case a long time. I've spent a great deal more time on it I dare say than a lot of people who have been talking about foot dragging, but in any event, I just have one example I might ask you about. Bolivar County is a majority Black county; has three representatives. Suppose this Court divided this county into three single-member districts. The three men who are in the legislature were elected by the same people who would be electing people from the single-member districts. What substantial right would be defeated by declining a special election in that case, or what constitutional right would be guaranteed by ordering that they run over again? That's just one example that comes to mind very quickly. Boliver County meets the population norms very nicely. It's a terrifically Black majority. The Black people

of the county, like all other citizens, participate in the election of the three representatives. Why should they have to have another election?

MR. JOHNSON:

I believe that goes directly to the issue in this case concerning the effect of a multi-member district in a Black area compared to the effect of a single-member district. The position of the United States has been, and still [37] is, that multi-member districts dilute the Black vote.

JUDGE COLEMAN:

Has any court ever held that as a per se proposition?

MR. JOHNSON:

Not as a per se proposition. Our position is based on the evidence presented to this Court last May and on the basis of that record and on the basis of the information the Department of Justice has filed with this Court evaluating the effect of multi-member districts in certain areas, and stating our specific reasons for objecting to the state's plan.

JUDGE COLEMAN:

Let me ask you this: Do you agree that under *East Carroll* our standard is constitutional and not Section Five standards?

MR. JOHNSON:

Yes, Your Honor. No doubt about that.

JUDGE COLEMAN:

All right. What are the constitutional standards that will be applicable to this? For one thing, Section Five switched the burden of proof from the plaintiff to the state of the subdivisions. The burden of proof under the

constitution, as I understand it, remains the same. Isn't that so?

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[44] [By Mr. Johnson] criteria was to attempt to group districts in our plan that coincided geographically with the boundaries in the court's plan and to exclude those from the need of special elections, because the premise is that you could not determine who the representative should be for those districts didn't apply. Our efforts to do that indicated that in extremely rare instances that that occurred, and we have set forth a description, and the affidavit does attach maps for our plan showing the counties in which special elections would not be necessary.

I'll use the remainder of my time——

JUDGE COX:

Time's up, isn't it?

JUDGE COLEMAN:

I want to hear him on one other point.

MR. JOHNSON:

We have filed previously our position on the meaning of the *Chapman case*. Our position is still that, and we believe that the Supreme Court's decision in *East Carroll Parish* substantiates that position, that single-member districts are required from this Court.

JUDGE COLEMAN:

What different language did they use in *East Carroll* to what they used in *Chapman*?

MR. JOHNSON:

[45] They didn't use any different language, Your Honor. I think the primary thrust is with *Mahan*. If the Court reads that opinion carefully I think they will see that only

where the Supreme Court discussed the changes made by the District Court did they discuss the issue of the preferability of single-member districts. The rational state policy discussion concerned affirming the plan that the Virginia legislature had adopted, not the plan the court had adopted.

JUDGE COLEMAN:

What I wanted to ask you about, Counsel, is the Court directed, or requested, one or the other, the Department of Justice to file a detailed report with this Court on this *White* v. *Regester* facet of the case indicating the observations made by the federal referees and examiners and observers in the first primary election in 1975, and second primary election in 1975 and the general election in 1975, and the Department of Justice, of course, complied with that request and filed that data showing just what incidents of any kind occurred under the observation of those observers that would indicate any impediment in the right of the Black people of Mississippi to cast their votes and to have them counted just like any other person. I wonder if you'd like to comment on what you think that data and those observations prove?

[46] As I recall it you had no complaints but about two or three cases. You had Madison and Yazoo where a single little incident occurred. May be others—I've not thoroughly read all of the report pending the oral argument here today. What would you like to tell us about the significance of that report where you had a widely attended first and second primary and general election and six or eight hundred on the scene watching what was going on and you could only come up with about two or three instances of any problems?

MR. JOHNSON:

I think first, of course, that report is quite lengthy and it has been some time since I've read the entire report and

would not be able to mention any specific details, but I think that the most important thing to emphasize to the Court on that is that that report alone does not address the issue of whether multi-member districts——

JUDGE COLEMAN:

I'm not talking about that at all. I'm talking about one facet of the constitutional standard, the lingering effect of past discrimination. *White* v. *Regester* is certainly one of the things that has to be considered.

MR. JOHNSON:

That report and what happened at the polls on election day certainly does not exhaust the possibilities [47] of how there may be continuing effects of past racial discrimination, so my statement on what that report means is that it's one piece of information for the Court to consider along with the other pieces of information in the record for the Court to consider.

JUDGE COLEMAN:

Would it be your opinion that the voting rights act, after it's been on the books for eleven years, has not yet accomplished its purpose in Mississippi?

MR. JOHNSON:

Well——

JUDGE COLEMAN:

You are speaking for the Department of Justice, and you came down to speak for them.

MR. JOHNSON:

I would say simply that there is a lot of work to be done pursuant to the voting rights act in Mississippi and other places.

JUDGE COLEMAN:

What would be the nature of that work?

MR. JOHNSON:

Well, of course the voting rights act observer and examiner program has been in effect for the eleven years, and in the view of Congress last year it was necessary to extend that.

[48] JUDGE COLEMAN:

It has been extended and still is the law.

MR. JOHNSON:

That's correct. My opinion is——

JUDGE COLEMAN:

My question is whether or not it's really served its purpose in Mississippi according to the evidence that you have submitted to the Court.

MR. JOHNSON:

I don't think that the voting rights act—certainly has not exhausted all possibilities of continued racial discrimination. I think what I was trying to say with regard to Congress is that Congress saw fit in its judgment that the voting rights act had not finally concluded all the effects of past discrimination and an extended period was necessary. That's the position of the Department of Justice.

JUDGE COLEMAN:

My position about it, frankly, is if I send 300 men out hunting and they came back with three birds I would think that maybe 297 of them had no business being along. That's what you did. I believe it was maybe 600 people. Let's say you sent out 600 men on a hunt and came back with 12 birds, which is about what you've turned up in all this observing.

You certainly had a right to observe, and frankly [49] I'm very glad you did. That's the only way to find out what's going on, is for the United States to send the people in there to see and tell us, but looks like the catch was mighty skimpy for the house to start hanging some kind of constitutional argument on it.

MR. JOHNSON:

The United States' position is not solely on the basis of that report you should hang your constitutional position. We feel that it's one piece of evidence with a lot of evidence for the Court to evaluate, and of course I would like to point out that it is known when we go into counties with federal observers they know we are going to be there, and of course the mere federal presence may well have an effect on the people not doing things that might otherwise exist. Certainly if a gentleman sees a police officer standing on the corner he's not going to go in and rob the bank in front of him. There is that effect.

JUDGE COLEMAN:

You are asking us to assume a good deal there.

MR. JOHNSON:

I'm really not asking the Court to assume anything other than point out that the limitations of that report that the United States foresaw even before this Court asked the United States to do.

JUDGE COLEMAN:

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[51] [By Mr. Summer] thing they said in 1970. I attended all of the hearings, and the congressional——

JUDGE COLEMAN:

Don't get into that, Mr. Summer, because Congress has passed the law and it is on the books. I was just asking

him about the evidence which he had tendered. I'd be glad for you to discuss that.

MR. SUMMER:

All right, sir. I'd like to say to the Court first that we are in an unusual position. As the Court knows, we are not in a position to submit plans as the plaintiffs and Department of Justice have. This was decided early on, I think, in the proceedings, and this was validated by the committee of the house and senate that has charge of these matters in the last session to pursue the plan that is presently before this Court, so I come before this Court not representing myself, but representing the plan that the state legislature passed that was amended by this Court.

I would first reiterate most of the things have already been said, but that this thing, the state, since 1817, 148 years ago, has been structured around a government of county governments, and those county governments have what used to be the state's relation with the federal government, and that probably presently doesn't exist now between the states and federal government now, but we have no state-wide [52] police, for instance. We have no state-wide lots of things because the people who wrote that constitution—and we still have it, whether it's good, bad, or indifferent—seem to think that it would be better to keep government on a local level than bring it on a state level, and as a result of that, of course, the constitution provides that the county lines cannot be changed without a vote of the people.

That being a constitutional mandate, I think it has some bearing in regard to the Court's final decision in regard to this thing.

Then, of course, you have the constitutional provisions in regard to passing of local and private legislation, which if we get into the special single-member districting plans that have been advocated by the plaintiffs and Department of Justice, you get into a fragmented state of affairs where the smaller counties will wind up with absolutely no representation and the larger counties will wind up with an indifferent representation, and you will have a bunch of representatives representing a group of people with no common interest, and therefore would not be bound to the principles and the historical factors that this state has grown and developed on, and that is the county lines, because within those county lines you have such things as issuance of bonds and securities, county hospitals, jails, disaster relief, county school districts, county homes and [53] farms, taxes, grand juries, criminal justice systems, county courts, county prosecuting attorney——

JUDGE COLEMAN:

That's why I think it's so disastrous and unfair for each and every county to have been denied at least one representative, but apparently we have already crossed that bridge.

MR. SUMMER:

Yes, sir. However, since we have crossed that bridge, this brings up a point that since *Baker* v. *Carr*, which was sought so avidly by those who wanted to change the entire system and get into a one man-one vote proposition which goes now to the election of the legislature, has reacted in that if it had not been for *Baker* v. *Carr* then I'm sure we wouldn't be at this table, because there would have been minority counties, voting counties, so the legislature would probably have 25 percent minority now without any trouble whatsoever, provided minority would vote for minority, which has never been shown in this Court even though it has been alleged.

There has been many instances where an entirely Black county in the State of Mississippi where in some instances they were not even Black candidates, and other instances

where the Black candidates were defeated by the White candidates, so the fact that the charges that is in the

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[58] [By Mr. Summer] One short thing that I would like to say before I shut up and that is that we had had prepared—talking about the responsiveness of a legislator to a minority group—we have had—we did not have time to put it in the form of an affidavit, but I think the Court should ta:e judicial notice of the matter of appropriations; that some $337,000,000 have been appropriated by the State of Mississippi for the minimum education programs, drug programs, vocational and technical education, manpower, adult education, learning research, school lunch programs —there is no way that any and all of these programs that some millions upon multiplied millions could have been spent or appropriated by the state legislature unless they had been responsive to the needs of the minorities.

Thank you, sir.

JUDGE COLEMAN:

Anything further, Mr. Parker?

MR. PARKER:

I didn't take all my time. I would like two minutes for a short rebuttal.

JUDGE COLEMAN:

I have a comment I want to make, but I want to hear from you all first.

MR. PARKER:

I disagree with the statement that the Court is

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Response of Defendants to Plaintiffs' Motion for an Immediate Decision

[TITLE OMITTED IN PRINTING]

[FILED AUGUST 9, 1976]

Defendants, by their attorneys, hereby respond to plaintiffs' motion for an immediate decision in this cause. As hereinafter set forth, defendants would state and show to the Court that while defendants have no objection to the actual relief requested by plaintiffs' motion, defendants do object to both the fact of the request and the erroneous grounds assigned therefor. In responding, defendants would state as follows:

1. In denying plaintiffs' similar motion at the last hearing, the Court properly characterized the complexity of the task and reaffirmed its determination that reapportionment was not to be unnecessarily delayed.

2. The parties to this action and the general public have been made aware via the news media that the Court's legislative reapportionment plan is proceeding with reasoned speed toward completion. Defendants would not add to this Court's laborious duty, nor infringe upon this Court's prerogative of determining at what hour, of what day, in which week it should render its decision in this cause by making a "grandstand" gesture for the purpose of pressuring this Court to act, without regard to necessary and proper judicial deliberation.

3. In requesting an immediate decision, plaintiffs further improperly imply that the Court should favor the interest of non-incumbent candidates who plaintiffs erroneously allege "have been excluded from the Mississippi Legislature by racially discriminatory multi-member districts and at-large voting. . . ." (Plaintiffs' Motion, p. 2) Likewise, plaintiffs erroneously assume that the Court has

made a finding that the present districts are in fact discriminatory. (Plaintiffs' Motion, p. 3)

4. Defendants submit that the Court's final decision embodying its legislative reapportionment plan should enure to the benefit of the entire electorate of the State of Mississippi and, contrary to the assertions of plaintiffs, that the Court's decision should not favor the interest of any particular group, however characterized. If the Court's task of fashioning a reapportionment plan comporting with law, equity, and the Constitution can be accomplished with reasoned speed, then defendants respectfully submit that such should be done. However, the interest of the entire electorate of the State of Mississippi should not be sacrificed for the interest of *time*.

Respectfully submitted,

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/s/ By: A. F. Summer
A. F. SUMMER

[CERTIFICATE OF SERVICE OMITTED IN PRINTING]

Defendants' Submission Pursuant to Order

[TITLE OMITTED IN PRINTING]

[FILED SEPTEMBER 8, 1976]

It is the firm position of defendants, and they hereby submit, that neither the *Constitution of the United States* nor the authoritative law or equity call for any special elections for the Mississippi Senate. No valid reason exists for invalidating the election in any Senate district conducted in 1975 pursuant to the orders of this Court.

During the June 15, 1976, hearing in this cause, the Court expressed its opinion as to what must be shown to justify the holding of special elections in this case:

> "We are further of the opinion that no special election should be required in any new legislative district unless the district used in the temporary plan in that particular geographical area was either impermissibly malapportioned or caused an impermissible dilution of Black voting strength." [Transcript, June 15, 1976; p. 8.]

While a finding of impermissible malapportionment or dilution does not *per se* mandate special elections, before special elections can be ordered *there must be a finding by the Court* that a particular temporary district was in fact malapportioned or did in fact impermissibly dilute black voting strength. Absent such a finding a Federal Court is without jurisdiction to order special elections.

The crux of the matter is plainly that racial dilution has never been shown by plaintiffs and in fact does not exist. On this vital point defendants point out three truisms:

1. Plaintiffs have failed to show and cannot show a denial of access to the political processes and, therefore,

have totally failed to show that any temporary Court-ordered district unconstitutionally diluted black voting strength. (See defendants' "Memorandum Brief on the Constitutional Standard for Measuring Racial Dilution", filed June 25, 1976.)

2. This Court has properly never made a finding that any particular temporary district or districts caused an impermissible dilution of black voting strength. The opposite is true. This Court has previously found, when presented with substantially the same districts adopted and proposed by the Mississippi Legislature, that *these districts did not unconstitutionally minimize black voting strength* and further were not malapportioned. [Opinion, May 19, 1975.] It should be remembered that plaintiffs stood on the record upon remand by the Supreme Court (June 5, 1975); thus, the facts are still the same.

3. In fashioning the new Senate plan, this Court applied the "Conner-Johnson Rule" expressing a preference for single-member districts in the Court-ordered plan. While defendants have strongly maintained that this rule spoke against *large* multi-member districts and not *small* multi-member districts, for the purposes of this argument defendants will not belabor the Court with how it should be applied but rather will focus on the *effect* when it is applied. As hereinafter set forth, *the "Conner v. Johnson Rule" ironically precludes the ordering of special elections in this case.*

This rule derives from the Supreme Court's supervisory power and not from any constitutional considerations; thus, if there did exist a necessity for a new Senate plan it was not for the purpose of replacing an unconstitutional Court-ordered plan, but rather a Court-ordered plan that allegedly failed to follow this rule imposed under the Supreme Court's supervisory powers.

Plaintiffs have in fact taken this position. They stated in their last brief at pages 1 and 2:

> ". . . this Court need not reach that issue [unconstitutional dilution of black voting strength] in striking down all multi-member districts in the 1975 temporary court-ordered plan and in ordering a permanent court-ordered plan which, as required, provides single-member districts statewide." [Plaintiffs' Memorandum of Law, filed June 25, 1975.]

This Court has never found unconstitutional racial dilution to exist. Such dilution does not exist. Plaintiffs repeatedly attempt to steer the Court into a determination that the Court itself diluted, by its former plan, voting strength of the black citizens of this state. This is not the case. The Court has frequently stressed that its efforts were to devise the fairest reapportionment plan it could without regard to race. The plaintiffs are simply wrong when they argue that the joining of an area having a black population majority with one having a white population majority where the resulting district has a white population majority constitutes unconstitutional racial dilution. Absent a showing of invidious discriminatory purpose and absent a showing of denial of access to the political processes the above situation does not result in dilution of black voting strength.

The Court held by its order of July 8, 1975, that

> ". . . no irreparable injury will occur by allowing the 1975 legislative elections to proceed under a temporary plan on the dates provided by law."

Defendants submit that the Court was eminently correct in that determination. The Court further held that

> "If the permanent plan, later to be adopted, manifests that the temporary plan has caused such an injury the same shall be corrected by special elections as provided by Mississippi law."

Again defendants would state that without a finding of racial dilution there can be no injury. Assuming *arguendo* that all that plaintiffs have said up to this point was correct, their request for special elections in the districts they have selected (as reported in the news media) is not only without constitutional, legal or equitable support but defies all reason. In the districts where plaintiffs request special elections there is minimal change in the territory in many districts and insignificant change in the black-to-white population ratio in all of these districts. For example, the Tate, Tunica, Quitman district has been altered only by the deletion of one supervisor's district from Quitman County and the Coahoma district was altered only by the addition of the above-referenced supervisor's district. Further the black-white ratio on the Tate, Tunica and Quitman district changed only by one-tenth (1-10th) of one percent (1%) [*i.e.*, from a 57.1% Black Population Majority ("BPM") to a 57.2% BPM]; and, the Coahoma district's BPM decreased by only one percent (1%) [*i.e.*, from a 65% BPM to a 64% BPM]. In each and every other district where plaintiffs want to hold another election, the changes were likewise very insignificant. These districts were already black population majority districts. The change were very insignificant. Plaintiffs' request for special elections in these districts is absurd.

Defendants submit that no special elections should be ordered. As held by the Court, the new reapportionment plan should "be in force and effect *for the regular quadrennial election of 1979 . . .*" Even if there were constitutional justification for special elections in certain districts, to prevent the domino effect of massive statewide special elections and the attendant irreparable injury to the electorate of the state, the Court should stay its hand so that its under-

lying purpose of restoring the stability of the Mississippi legislature can be achieved!

Repectfully submitted,

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[Certificate of Service Omitted in Printing]

Defendants' Submission Pursuant to Order and Objections to Request for Special Elections

[TITLE OMITTED IN PRINTING]

[FILED SEPTEMBER 23, 1976]

The state defendants, by their attorneys, object to the requests for special elections in any new House or Senate districts. Pursuant to the Court's Order of September 8, 1976, defendants submit the following in opposition to the calling of any special legislative elections prior to the regular quadrennial elections of 1979.

I. WHAT THE PLAINTIFFS AND PLAINTIFF-INTERVENOR REALLY SEEK IS A POLITICAL "SOLUTION" TO THEIR PERCEIVED POLITICAL "PROBLEMS" AND TO USE THIS COURT AS THE VEHICLE TO ACHIEVE ITS POLITICAL RESULTS.

What the plaintiffs and plaintiff-intervenor really seek is a political "solution" to a political "problem," and they seek to use this Court as a vehicle to accomplish such a result. Their request for special elections is an attempt to increase the black membership in the state legislature by isolating in on certain districts where they *believe* they have an opportunity to elect a black legislator where a white legislator or legislators now represent the district. Their theory is based on the percentage of black voting-age population in the new district created by this Court for the 1979 legislative elections.

The defendants urge upon this Court that the plaintiffs and plaintiff-intervenor are not entitled to use the offices of the United States District Court to seek a purely political solution to what is purely a political problem.

Assuming arguendo that the plaintiffs were correct in their contention that they have a right to redress, their

hypothesis with respect to the expectation of results is pure speculation.

Plaintiffs and plaintiff-intervenor would have the Court believe that, based on the request for special elections they have made to the Court and the statistical data submitted to support such request, there would be some massive increase in the number of blacks elected in such special elections. The defendants believe that to be sheer fantasy. Blacks have participated as candidates in legislative districts where there is a substantial black voting population, and yet the results of such elections clearly indicate beyond any reasonable argument that blacks will not necessarily support any and every black candidate. The result, therefore, is that there would be a substantial disruption of the current Mississippi Legislature with little or no likelihood that the results, from a racial point of view, would be significantly different.

Most of the requests for special elections for the Senate and many such requests for the House are apparently aimed at districts which are now smaller geographically than they were in 1975. This choice is apparently based on a theory that it is easier for a black to campaign in a small district as opposed to a large one geographically. Defendants can only urge upon this Court that such consideration is so far beyond the purview of the Fourteenth and Fifteenth Amendments as to have this Court engage in the rankest kind of political decisionmaking.

At the risk of redundant alliteration, what the plaintiffs and plaintiff-intervenor request is that this Court engage in selective gerrymandering of the current legislature by picking and choosing certain legislative districts in which to seek special elections in the hope—and we emphasize *hope*—that by some strange twist of fate, the black voters in the selected target districts will somhow unite behind a single black candidate. We submit that that may be great

political euphoria, but there is not a scintilla of evidence in this record that would indicate that such a result is reasonably to be expected. In the meantime, the state's political machinery and processes in one of its indispensable branches of state government are to be substantially disrupted. The defendants would urge upon this Court that it view the legislature not simply as a two-house organization of 174 individual members, but rather as an institution of state government and one that this Court and all federal courts should give some deference to with respect to its ability to conduct and transact its business.

In short, the plaintiffs and plaintiff-intervenor have attempted to make out a case for political intervention by the federal government through the federal courts in to the political processes of a sovereign state, but they have fallen woefully short of making out a case for intervention based on the Fourteenth and Fifteenth Amendments to the Constitution of the United States.

II. The Plaintiffs and Plaintiff-Intervenor Have Failed To Make an Argument for a Dilution of Black Voting Strength within the State, and Specifically within those Districts for which They Have Requested Special Elections Pursuant to the Permanent Plan of Reapportionment, which Would Require this Court on any Constitutional Theory To Order Special Elections Prior to the General Elections To Be Held in 1979.

The facts in this case are clearly distinguishable from those in the case of *White* v. *Regester*, 412 U.S. 755, 37 L.Ed. 2d 312, 93 S.Ct. 2332 (June 18, 1973). There, the Supreme Court did not make sweeping statements regarding the nature of the right to vote and what specific measures must be taken to preserve it intact, but rather concluded that:

> "On the record before us, we are not inclined to overturn these findings, representing as they do a blend of history and an *intensely local appraisal* of the design and impact of the Bexar County multimember district in the light of past and present reality political and otherwise."

White v. *Regester* showed a long history and pattern of exclusion of Mexican-Americans and blacks from the most elementary of political participation in Bexar and Dallas Counties, Texas. The Court in *White* was confronted with a challenge to the multimember district of Dallas County, Texas. An important factor relied upon by the district court was the fact that the *Dallas Committee for Responsible Government* (DCRG), a white-dominated organization, was in effective control of Democratic Party *candidate slating* in Dallas County; and as the district court found, the DCRG did not need the support of the Negro community to win elections in that county.

Thus, as the Supreme Court determined:

> "... the District Court concluded that 'the black community has been effectively excluded from participation in the Democratic primary selection process,' id., at 726, and was therefore generally not permitted to enter into the political process in a reliable and meaningful manner."

No such candidate-slating process exists in Mississippi. Further, the record clearly shows that black citizens have no difficulty in securing a position on the ballot for any office in the State of Mississippi. *White* and *Whitcomb* v. *Chavis*, 403 U.S. 124, 29 L.Ed.2d 363, 91 S.Ct. 1858 (1971) teach that one of the critical factors in determining "acceses to the political process", and thus whether multimember districts in a given area have a diluting effect on the voting strength of the black community in that area, is whether or not those particular black citizens are effectively excluded from the *initial* selection process and thus not permitted to *enter* into the political process.

Plaintiffs' "evidence" offered to show the denial of access to the political processes is not only rendered insubstantial by its own weight, but is of minute value to this Court. It is cast in the most general and theoretical terms. Likewise, it is directed toward multimember districts generally. Furthermore, plaintiffs' own evidence demonstrates that black citizens in Mississippi enjoy full access to the political processes. Plaintiffs' own witnesses testified that black citizens have no difficulty in registering to vote, in voting for those candidates they prefer, or in running for elective office. Reverend Barber testified that the ". . . technical bars to political participation are 99 percent down." [May 5, 1975 Transcript, 253] Plaintiff Kirksey testified that he has encountered no difficulty in the exercise of his right to vote and that he was able to garner 10,000 votes for a state Senate seat on the expenditure of only $85.00.

As was brought out during the most recent hearing before this Court, there were only a *few* minor voter irregularities during the 1975 primary and general elections. Federal observers positioned at hundreds of polling places throughout the state, including the black majority areas, found nothing other than the normal types of problems that are to be expected in any election regardless of where it might be held or whose name might be on the ballot or what the color of voters' skin might be. Unlike the plaintiffs in *White* v. *Regester*, supra, plaintiffs have not even attempted to offer, nor could they offer, specific evidence as to any particular multi-member district and the particular "diluting" effect such district has on a particular black community. Without question, they have not shown a denial of access to the political processes in the former districts where they now seek special elections.

Where the minority group is afforded the opportunity to participate in all stages of the political process and where the redistricting scheme is rooted in a strong state policy

divorced from the maintenance of racial discrimination, there can be no finding of dilution.

In this Court's opinion of July 11, 1975, it set forth its conclusion that in the electoral process black citizens are not now suffering from the impact of past discrimination. The Court stated:

> "Our former opinion in this case, dated May 19, 1975, —— F.Supp. ——, found as a fact (reversed on other grounds) that in the electoral processes black citizens are not now suffering from the impact of past discrimination; that they are not hindered, hampered, or in any way impeded in registering to vote, or in voting, for candidates of their individual choice.
>
> "We there concluded:
>
> 'As a matter of fact, it is obvious that the Voting Rights Act of 1955 has effectually reduced all such racially discriminatory factors to what honestly may be determined an irreducible minimum.'
>
> "In the present opinion, we include by reference all of the facts and considerations set forth in the May 19 opinion negating the presence of racial discrimination in the electoral processes of this State.
>
> "At the hearing held in this Court subsequent to the most recent Supreme Court remand we expressly offered the parties an opportunity to submit further evidence on this subject. Including the Department of Justice, they all stated that they preferred to stand on the record as it existed at the time of our prior opinion. No further evidence was offered."
>
> [See *Washington* v. *Davis*, No. 74-1492, 44 U.S.L.W., 4789 (June 7, 1976), for the latest announcement that ". . . proof of discriminatory racial purpose is [necessary] in making out an equal protection violation."]

Therefore, plaintiffs have failed to make out a case based on this record of a right to constitutional redress for any claim of denial of access to the political process in Mississippi, as it has any bearing on the elections of 1975. Failing that, they are not entitled to a remedy in the form of special elections in 1977 based on the claim of dilution of the black vote.

III. THE PLAINTIFFS AND PLAINTIFF-INTERVENOR HAVE FAILED TO MAKE OUT A CONSTITUTIONAL ARGUMENT REQUIRING THIS COURT TO CALL SPECIAL ELECTIONS BASED ON ITS PERMANENT REAPPORTIONMENT PLAN, IN THAT THE MULTI-MEMBER DISTRICTS IN BOTH HOUSE AND SENATE ARE NOT CONSTITUTIONALLY IMPERMISSIBLE.

Connor v. *Johnson* permits the use of multi-member districts. Single-member districts are only "preferable" as a "general matter." This Court has addressed the problem of multi-member districts since the Supreme Court's holding in that case and has also obviously been cognizant of the Court's holdings on that question in *Chapman* v. *Meier*, 420 U.S. 1 (1975). Multi-member districts have been official state policy in the State of Mississippi for the last 159 years. It is obvious, therefore, that such multi-member districts were not founded on any basis of racial exclusion. Nevertheless, this Court, in preparing the 1975 plan, was cognizant of the Supreme Court's general principle as laid down in *Connor* v. *Johnson*.

In the 1975 plan, the Court apportioned the state's largest county into 12 single-member House districts and 5 single-member Senate districts with which the plaintiffs and plaintiff-intervenor do not find fault except as the district lines themselves have been drawn.

The other multi-member districts in the temporary plan were small both as to their total number and as to the

number of legislative positions to be filled within each. They certainly do not fall within the Supreme Court's concern of large multi-member districts. Therefore, there is no need for special elections since the small multi-member districts existing in the 1975 plan were not in any respect in violation of the Constitution.

IV. THE NATURAL AND PROBABLE RESULT OF THE COURT'S GRANTING OF THE PLAINTIFFS AND PLAIPTIFF-INTERVENOR'S REQUEST FOR SPECIAL ELECTIONS IN EITHER HOUSE OR SENATE WILL REQUIRE ELECTIONS IN ALL OR NEARLY ALL LEGISLATIVE DISTRICTS OF THE STATE BECAUSE OF THE "DOMINO" EFFECT OF THE HOLDING OF SUCH SEGMENTED OR PARTIAL LEGISLATIVE SPECIAL ELECTIONS.

Again, the plaintiffs and plaintiff-intervenor, while seeking a political solution to their political problem, have failed to recognize and thus have failed to advise this Court as to what the practical results of special elections, as they have requested, would be with respect to the rest of the legislative districts and the people who inhabit them. Some would be under-represented, some over-represented and some unrepresented. Some would be balkanized and others would be fragmented.

It is time for this controversy to cease. As this Court so aptly stated:

> "There comes a time when stability, the prime requisite of effective government, should be attained. We have decided to divide the State into single-member legislative districts in the hope that this long-running controversy may at last be terminated and the stability of the Mississippi Legislature restored."

Plaintiffs and plaintiff-intervenor's request for special elections is but a continuation of their constant efforts to bring about instability in the Legislature of the State of Mississippi. To effectuate a final and just resolution to

this cause, the request for special elections should be and must be denied.

Respectfully submitted,

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